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IN THE

Supreme Court of the United States

October Term, 1964
Case No. 426

Office-Supreme Court, U.S.
FILED
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HENRY GOLDMAN and MAY GOLDMAN,
Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,
Appellees.

On Appeal From the Supreme Court of the State of California.

STATEMENT OF JURISDICTION.

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THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellees.

On Appeal From the Supreme Court of the State of California.

STATEMENT OF JURISDICTION.

The Defendants and Appellants Henry Goldman and May Goldman submit herewith this statement particularly disclosing the basis upon which this Court has jurisdiction to review the judgment of the Supreme Court of California in Case Number L.A. 26751.

Opinion Below.

The opinion of the California Supreme Court is reported in the Advance Sheets, 61 Cal. Adv. 1. A copy of the Opinion is attached hereto as Appendix "B".

Jurisdiction.

1. A petition for a determination of the validity of a redevelopment plan (The Bunker Hill Urban Renewal Project 1-B) and bonds was filed in the Los Angeles Superior Court by the Community Redevelopment Agency of the City of Los Angeles. The petition was filed pursuant to Sections 33955 through 33961 of the California Health and Safety Code (since recast as numbers 33501 through 33503). Five separate actions, including one instituted by Appellants, were consolidated for trial in this special proceeding. A memorandum decision of the Trial Judge was rendered in favor of the Agency. Appeals by the various parties contesting the validity of said redevelopment plan and of certain laws authorizing, and of certain procedures in connection therewith, were taken to the California District Court of Appeal. The District Court reversed the Trial Judge and remanded the case to the Trial Court. Upon petition of the Agency and the City of Los Angeles, a hearing in the California Supreme Court was granted. On February 27, 1964, the California Supreme Court rendered its opinion (Appendix B). This Opinion reversed the decision of the District Court of Appeal (Appendix A) and upheld the Trial Court except in the matter of costs. Petitions for a rehearing were filed by the various defendants, including Appellants, and were denied by the California Supreme Court on March 25, 1964. Notice of Appeal to the United States Supreme Court was duly filed by Appellants in the California Supreme Court on June 22, 1964. (Note: A Petition for a Writ of Certiorari was filed with this Court at an earlier date, by defendant Frank W. Babcock, and docketed with the record as Case No. 205, October 1964 Term).

2. The jurisdiction of this Court to review the above decision of the California Supreme Court on direct appeal is conferred by 28 U. S. Code, Sections 1257(2) and 2101(c).

Statutes Involved.

Sections 33950 through 33954 of the California Health and Safety Code. (These sections have since been re-cast as Sections 33670, 33671, and 33672). (Appendix C).

42 U. S. C. A. Section 1460(c) (Appendix C).

Los Angeles City Ordinance No. 113231 (Appendix D).

Constitutional Provisions Involved.

Article XIII, Section 19, of The California Constitution (Appendix C).

Questions Presented.

The following questions are presented by this Appeal.

1. Do Article XIII, Section 19, of the California Constitution and Sections 33950 through 33954 of the Health & Safety Code of California violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution?

2. Do the provisions of Article XIII, Section 19, of the California Constitution, and Sections 33950 and 33954 inclusive of the Health & Safety Code violate Article I, Section 10, of the United States Constitution?

3. Did the Supreme Court of California violate procedural due process of law as required by the 14th

Amendment of the United States Constitution in determining that the petitioners herein did not have capacity to question and enforce in a State Court the compliance of mandatory conditions precedent imposed upon the Community Re-Development Agency by Section 1460(c) of the Housing Act of 1949, as amended?

4. Did the Supreme Court of California violate procedural due process of law as required by the 14th Amendment of the United States Constitution in determining that a Municipal Taxpayer and Property Owner directly affected may not question in a State Court, under a State Statute (Section 33746 Health & Safety Code) the legal authority of a municipality and/or of a redevelopment agency to use federal funds to illegally acquire by eminent domain land situated in an area to be developed under the provisions of the Housing Act of 1949 and the Redevelopment Act of California?

5. Did the Supreme Court of California violate procedural due process of law in violation of the 14th Amendment of the United States Constitution in determining that Section 1460(c) of the Housing Act of 1949, as amended, was not a mandatory condition precedent imposed upon the redevelopment agency of the City of Los Angeles, and the City of Los Angeles, respectively?

6. Does the ordinance approving the re-development plan violate the equal protection clause of the 14th amendment of the United States Constitution, in imposing upon a participating owner the assumption of his pro rata share of public site improvements, whereas redevelopers are exempted from a similar financial responsibility?

Statement of the Case.

The Material Facts.

The Los Angeles City Council, on March 31, 1959, as required under the Community Redevelopment Law of the State of California, then numbered Sections 33000 through 33185 of the Health and Safety Code, adopted Ordinance 113, 231 (Appendix D), approving the Bunker Hill Urban Renewal Project 1-B (see in particular Sections 33008, and 33705, and 33730 *et seq.* through Article 2, of the California Health and Safety Code, Stats. 1951) [C. T. 629].

In adopting the plan for said Bunker Hill Project, the Council, as authorized by Sections 33950 through 33954 of the Health and Safety Code, appropriated tax monies belonging to Los Angeles County, the Los Angeles City School District, the Metropolitan Water District and the Los Angeles County Flood Control District (all of which agencies levy taxes against property within the Bunker Hill Project area (see Section 33952), to pay for approximately *three-fourths of the City's cost* of the Bunker Hill Project. The total amount of the taxes thus appropriated by the Council from these other taxing agencies, over which the City Council *per se* has no jurisdiction, can be estimated to amount to $18,000,000 to $60,000,000 or more. The Council also took other actions and made other findings which Appellants allege are in violation of Federal Law and the Federal Constitution, and which are detailed under "Where the Federal Question Were Raised", *infra*.

On May 25, 1959, Appellants herein filed an action for Declaratory Relief in the Los Angeles Superior Court, No. 723434, in which Appellants alleged among

other things that Sections 33950 through 33954, and Article XIII, Section 19, of the California Constitution authorizing same, and the Los Angeles City Council's action in adopting Ordinance 113,231 approving the Bunker Hill Project and containing the tax appropriation provisions authorized by said Sections 33950 through 33954, violated the "due process" and "equal protection under the laws" clauses of the Fourteenth Amendment, and Article I, Section 10, of the U. S. Constitution; and that provisions in said Ordinance 113,231 imposing upon a participating owner the assumption of his pro rata share of public site improvements, whereas redevelopers are exempted from a similar financial responsibility, violated the equal protection clause of the Fourteenth Amendment.

On December 28, 1959, the Community Redevelopment Agency of the City of Los Angeles, acting under Sections 33955 through 33961 of the Health and Safety Code, filed a petition in the Los Angeles Superior Court to determine the validity of the Bunker Hill Project plan and bonds to be issued to finance it, in the amount of $20,000,000 [C. T. 619]. (The appropriation by the City Council of tax monies belonging to Los Angeles County, the Los Angeles City School District, etc., noted above, was to repay the principal and interest of these bonds, and any other loans the Agency might incur in connection with the Project). Appellants case No. L. A. Superior Ct. No. 723434, as amended, was stipulated to be a responsive pleading to this special proceeding instituted by the Agency [C. T. 57]. Four other actions by other parties were consolidated with Appellant's in this special proceeding.

Judgment in favor of the Agency and against Appellant and others who had joined with Appellant in contesting the legality of the Bunker Hill Project and various procedures in connection with preparing and adopting it, and various statutes under which it was adopted, was rendered by the Trial Court, along with findings of fact and conclusions of law [C. T. 199, 222]. Appellants, along with others whose cases had been consolidated in the special proceedings, duly appealed to the California Supreme Court and the appeal was referred to the District Court of Appeal [C. T. 445]. On August 6, 1963 the District Court rendered a decision (see Appendix A) limited to a finding that the Trial Judge had not granted a judicial review regarding certain findings and conclusions contained in the Bunker Hill Project plan, and remanded the case to the Trial Court [C. T. 57].

A petition for a rehearing to the District Court by the Agency and City was denied, and the agency and city thereupon petitioned the California Supreme Court for a hearing. This was granted, and on March 25, 1964, the California Supreme Court reversed the opinion of the District Court, and upheld the Trial Court except in the matter of costs (Appendix B). Like the Trial Court, the Supreme Court ruled against Appellants on all of the Federal Questions raised by Appellants (see Appendix B, pp. 73-83). (See also "The Federal Questions Are Substantial", *infra*).

On June 19, 1964, Frank W. Babcock, one of the parties whose action had been consolidated along with Appellant's and others, in the Special Proceedings instituted by the Agency, petitioned this Court for a Writ of Certiorari, and with his petition filed the record in

this case. Babcock's petition and the record were docketed in this Court as Case No. 205, October Term 1964. On June 22, 1964, Appellants filed Notice of Appeal to this Court in the California Supreme Court.

Cases Believed to Sustain Jurisdiction.

Boom Co. v. Patterson, 98 U. S. 403 (when the sovereign power attaches conditions to the exercise of eminent domain the inquiry whether the conditions have been observed is a proper matter for judicial inquiry.)

Cincinnati v. Vester, 281 U. S. 439.

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 Sec. 1064; *Oyama v. California,* 332 U. S. 633, 92 L. Ed. 249, 68 S. Ct. 269; *Takahashi v. Fish & Game Commission,* 334 U. S. 410, 92 L. Ed. 1478, 68 S. Ct. 1138.

Home Telephone v. County of Los Angeles, 227 U. S. 278, 33 S. Ct. 312, 57 L. Ed. 510; *Greene, Auditor v. Louisville,* 244 U. S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, Ann Cases 1917 E, 88; *Raymond, Treasurer v. Chicago Traction Co.,* 207 U. S. 20, 28 S. Ct. 7, 52 L. Ed. 78; *Lowell v. City of Griffin,* 303 U. S. 444, 450, 58 S. Ct. 666, 668, 82 L. Ed. 949; *Iowa Des Moines Natl Bank v. Bennett,* 284 U. S. 239, 246, 247, 52 S. Ct. 133, 76 L. Ed. 265; *Snowden v. Hughes,* 321 U. S. 1, 13, 64 S. Ct. 397, 88 L. Ed. 497.

The validity of contracts through which the United States is exercising its constitutional functions, and

their consequences on the rights and obligations of the parties:

United States v. Allegheny County, 322 U. S. 174, 183;

Deitrick v. Greaney, 309 U. S. 190, 201;

Machinists v. Central Airlines, 372 U. S. 682, 690.

The Federal Questions Are Substantial.

The Supreme Court rejected petitioner's contentions that were advanced in the Superior Court and urged again on appeal to the Supreme Court that compliance by the local public agency of all statutory determinations and requirements of the Federal Urban Renewal Act was a condition precedent to the validity of a re-development plan. In the trial held before the Superior Court, petitioner contended by his first amended complaint that the re-development plan was incomplete and void for uncertainty in violation of the 14th amendment of the United States Constitution and that it constituted an unlawful delegation of legislative power in that no ascertainable standard was prescribed to enable a determination to be made by the agency as to whether land may be acquired by condemnation in furtherance of a re-development project, which land is predominantly residential in character, for the purpose of converting the area into a predominantly commercial area. Plaintiffs contended further that Federal funds acquired from the United States Government, in furtherance of a community re-development plan, may not lawfully be used by any municipality or re-development agency under the limitations contained in Section 1460 of the Federal Slum Clearance and Urban Renewal Act, for

the purpose of acquiring land by condemnation in a predominantly residential area and converting the project area into a predominantly commercial area when the land was suitable for a residential area. [Clk. Tr. Vol. 1, p. 167, lines 1-26.]

In a pre-trial statement, signed by the parties, and approved by the trial court, the petitioners herein raised as an issue of law involved, in the case, (a), Whether the final plans had violated the 14th amendment of the United States Constitution [Clk. Tr. Vol. 3, p. 561, line 14] and whether 42 U. S. C. A. Section 1460 authorized the use of federal funds for the redevelopment of predominently residential areas for predominently commercial uses. [Clk. Tr. Vol. 3, p. 562.]

The petitioners raised as a contention that under 42 U. S. C. A. Section 1460, federal funds may not be expended by a municipality or redevelopment agency for the purpose of acquiring by condemnation land which is predominently residential and converting said land to commercial use, when the land is suitable for residential use. [Clk. Tr. Vol. 3, p. 565, lines 14-18.]

Failure to Plead Compliance With Section 33736.

A Redevelopment Plan must contain a declaration of necessity in compliance with Section 33736—Health and Safety Code.

A Finding of Necessity is a jurisdictional, mandatory condition precedent, required to be made by a Redevelopment Agency in the adoption of a Redevelopment Plan.

Where a Resolution of Necessity has not been adopted by the proper public agency, the court has no jurisdiction to proceed in a condemnation case.

The institution of prosecution of an action in condemnation without compliance with the conditions precedent of the adoption of a resolution of necessity violates the due process clause of the 14th amendment of the United States Constitution.

Failure to Allege Compliance With All the Conditions Precedent Required of the Housing Act, of 1949, as Amended, 42 U. S. C. Section 1460.

Plaintiffs were required to allege and prove that the intending public use is a public use contemplated by Section 1460 of the U. S. Code Annotated, which is the basic statute under which urban renewal is provided for by federal law.

The adoption of the ordinance approving the final redevelopment plan was the initial step in the exercise of the Respondents future right of eminent domain.

The condemnation thereafter can only be made if there has been compliance with the conditions imposed by statute. (*Gilmer v. Lime Point,* 19 Cal. 47.)

Compliance with such conditions are a condition precedent to the right of eminent domain. (*Lincoln v. Colusa County,* 28 Cal. 662, 666; *S. F. and A. W. Co.,* 36 Cal. 639, 646, 647.

By analogy the Supreme Court has held that there is judicial review to determine whether the taking is for a public use or purpose. (*Cincinnati v. Vester,* 281 U. S. 439, 446.)

In the above case the Supreme Court concluded that proceedings for excess condemnation of the properties involved in the suits were not taken in conformity with the applicable law of the state.

Section 33746—Health and Safety Code—clearly contemplates litigation to contest the validity of proceedings for the adoption of a redevelopment plan and to contest matters affecting jurisdiction.

Petitioners Have Capacity to Sue.

Both the Superior Court and the California Supreme Court rejected Petitioners' contention that compliance by the Redevelopment Agency of all statutory determinations and requirements of the Housing Act of 1949 as amended (42 U. S. C. A. Sec. 1441, *et seq.*, esp. Sec. 1460(c) was a condition precedent to the validity of the redevelopment plan. (61 Adv. Calif. pp. 54-55.)

The California Supreme Court in disposing of Petitioners objections raised to the invalidity of the plan and of the failure to comply with the condition precedent imposed by Section 1460(c) declared that Petitioners had no standing to *maintain* a suit to enjoin the expenditure of federal funds by the Agency.

In these proceedings Petitioners are not seeking to enjoin the expenditure of federal funds by the Agency.

Under California law, conditions precedent for the taking of land by eminent domain are jurisdictional and must be complied with. In *Great Northern Ry. v. Superior Court,* 126 Cal. App. 575, there, the Appellate Court acknowledged the contention that a condemnation action did not allege that an order of the Railroad Commission was first procured consenting to the crossing or determining its location, in the conditions incident thereto. The Appellate Court concluded that the Superior Court was without jurisdiction to try the eminent domain case.

In *Northwestern Pacific R.R. Co.*, 34 Cal. 2d 454 upon the filing of a condemnation suit to obtain land for the proposed extension of a street, the City obtained an *ex parte* order for immediate possession. Following the denial of several motions to vacate the order, the California Supreme Court granted an alternative Writ of Prohibition to restrain further proceedings until the question of jurisdiction was determined.

In granting a peremptory Writ and in annulling the order of possession, the Supreme Court declared that the approval of the Public Utilities Commission should precede the exercise of jurisdiction by a court in a condemnation action requiring the relocation of tracks.

Failure to allege compliance with such conditions precedent is regarded as necessary to the jurisdiction to proceed to condemn by other courts of the United States, Oregon, Indiana, Ohio, and other states.

Town of South Tucson v. Tucson Gas Co., 149 F. 2d 847 (9th Cir.) holding that a resolution adopted by a town seeking to condemn all of the properties of the Appellee had not complied with the applicable statute. An order dismissing the condemnation proceedings was affirmed.

The Authority to Condemn Must Be Found in a Statute.

Section 1460(c) imposed a limitation upon the authority of the Municipal officials to exercise the power of condemnation in procuring sites for redevelopment.

Thus, there was read into the State Act an express limitation restricting the authority on the very officials the Congress chose to rely.

In *Lukens v. Perkins,* 107 F. 2d 627, an action was brought for an injunction restraining the Secretary of Labor from continuing in effect a determination made pursuant to the Public Contracts Act. In reversing a judgment of dismissal, the circuit court said, "The bill did not ask the court to interfere with the official discretion of the Appellees. It challenged their authority to do the things of which complaint was made."

See also:

United States v. Lee, 106 U. S. 196.

Quoting Mr. Justice Harlan in *Madison Ville Traction Co. v. Mining Co.,* 196 U. S. 239,

> "It is erroneous to suppose that the Legislature is beyond the control of the courts in exercising the power of eminent domain, either as to the nature of the use or the necessity for the use of any particular property; for if the use be not public, or no necessity for the taking exists, the legislature cannot authorize the taking of private property against the will of the owner, notwithstanding compensation may be required."

The determination by the California Supreme Court that the Petitioners herein did not have capacity to object to the approval of the final plan despite the uncontroverted violation of Section 1460(c) 42 U. S. C. A. (61 Adv. Cal. pp. 54-55) is a denial of procedural due process in violation of the Fourteenth Amendment.

Chicago v. Chicago, 166 U. S. 226, 234-5;

National Association v. Alabama, 357 U. S. 449, 456.

The authority to obtain the funds for the acquisition of the land of the Petitioner is derived from Section 1460(C) 42 U. S. C. A. In *Hose v. United States;* 218 U. S. 322, the Supreme Court said,

> "The taking of private property by an officer of the United States for public use, without being authorized, expressly or by necessary implication, to do so by some Act of Congress, is not the act of the Government."

In *United States v. Carmack,* 329 U. S. 230, 236-237, 67 S. Ct. 252, 255, 91 L. ed. 209, Mr. Justice Burton pointed out the Fifth Amendment provides an owner "With important protection against abuse of the power of eminent domain."

The right of eminent domain is statutory, and the enforcement of it is subject to a compliance with the conditions and requirements prescribed by statute. (*Union Electric Light and Power Co. v. Snyder,* 8 Cir. 65 F. 2d 297, 308.) The findings and determinations of an Agency and of a legislative body in the adoption and approval of a redevelopment plan by California statute were made subject to judicial review by a court of competent jurisdiction. (33746 Health & Safety Code.)

Congress expressly provided for financial assistance for redevelopment to areas which were to become predominently residential.

Exceptions were to be made limited in amount for such purpose to areas not predominently residential and not appropriate for residential purposes.

There was a further limitation imposed as to land to be developed for non-residential uses.

Congress delegated to the Municipal officials the authority to determine whether the re-development of land (whether initially residential or non-residential) for non-residential purposes, was necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound plannning standards.

This limitation and determination appears as a condition precedent requiring the adoption of such a determination.

Despite the clear and unambiguous language permitting judicial review of the findings and determinations of the legislative body in the adoption of a redevelopment plan, the California Supreme Court has declared that such a review of the lack of compliance, with Section 1460(c), 42 U. S. C. A. cannot be made by Petitioners because of their lack of standing to enjoin the expenditure of federal funds.

The Construction of Section 1460(c) Housing Act of 1949, as amended, and of the rights of the parties, present questions of Federal Law.

Clearfield v. U. S., 318 U. S. 363, 366;
S. R. A. v. Minnesota, 327 U. S. 558, 564;
United States v. Allegheny County, 322 U. S. 174, 183;
United States v. Jones, 176 F. 2d 278, 281.

The issue in this case is not comparable to that of the validity of the taking. We have involved here the interpretation and application of a statute (*Goldberg v. Wade*, 290 F. 2d 408, 419).

Apropos are those cases holding that the right of eminent domain is statutory and the enforcement of it is subject to a compliance with the conditions and re-

quirements prescribed by statute. (*Union Electric Light v. Snyder*, 55 F. 2d 297.)

In *Hose v. United States*, 218 U. S. 322, 31 S. Ct. 85, 54 L. Ed. 1055, the Supreme Court said,

> "The taking of private property by an officer of the United States for public use, without being authorized expressly or by necessary implication to do so by some act of Congress, is not the act of the Government."

Arizona v. California, 373 U. S. 546, 626, declaring

> "The principle that authority granted by the Legislature must be limited by adequate standards serves two primary functions vital to preserving the separation of powers required by the Constitution."

Youngstown Co. v. Sawyer, 343 U. S. 579, holding that the seizure of certain steel mills by Act of the President of the United States were subject to judicial review (and were not within the constitutional power of the President).

In *Osborne v. Missouri Pacific Railway*, 147 U. S. 248, 258, the Supreme Court said:

> "Whenever the power of eminent domain is about to be exercised without compliance with the conditions upon which the authority for its exercise depends, courts of equity are not curious in analyzing the grounds upon which they rest their interposition. Equitable jurisdiction may be invoked in view of the inadequacy of the legal remedy where the injury is destructive or of a continuous character, or irreparable in its stature; and the appropriation of private property to public use,

under color of law, but in fact without authority, is such an invasion of private rights as may be assumed to be essentially irremediable, if, indeed, relief may not be awarded ex debeto justipiae".

The Congress having given authority to the municipal agencies to obtain funds for the acquisition of land in a project area and if necessary to condemn it after making certain determinations has denied the power to the agencies to acquire such land except where the authority has been given.

When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." (*Maiatico v. United States,* 302 F. 2d 880, 886, (1962)). In the preceding case the Court of Appeals (D. C.) upheld the "right of the owners" to challenge the validity of the taking for departure from statutory limits."

The Court in reversing the denial of the motion to dismiss said that Congress had not been shown to have authorized the present taking.

By analogy in the present case Congress has authorized the taking of Petitioners land only if a determination was first made that such land for the proposed *non residential purposes* was necessary and to facilitate the proper growth and development of the Community.

Absent such a determination the ordinance approving the final redevelopment plan constitutes an unconstitutional approval for the proposed taking of Petitioner's land. (An action has since been commenced in eminent domain against Petitioners which is being held in abeyance by the Superior Court pending a decision by this Court as to the lawfulness of the proposed taking).

The Courts Have Consistently Struck Down State Regulations and Actions Which in Purpose and Effect Seek to Impose Discrimination.

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220, 6 S. Ct. 1064;

Oyama v. California, 332 U. S. 633, 92 L. Ed. 249, 68 S. Ct. 269;

Takahashi v. Fish & Game Commission, 334 U. S. 410, 92 L. Ed. 1478, 68 S. Ct. 1138.

Appellant raised the contention that the ordinance approving the redevelopment plan violated the equal protection clause of the 14th amendment of the United States Constitution in imposing upon a participating owner the assumption of his pro rata share of public site improvement whereas redevelopers were exempted from a similar financial responsibility.

Appellant raised as a contention in the Amended Complaint that the California Redevelopment Law was void for uncertainty in violation of the 14th amendment, in that it had failed to clearly provide an ascertainable guide to enable the local legislative bodies to determine what covenants, conditions and restrictions may be lawfully included by them in a redevelopment plan.

That it was further void for its uncertainty in that local legislative bodies could be required to guess as to whether by the inclusion of the language "other covenants, conditions and restrictions" is meant that the local legislative bodies may or may not assess the cost of public site improvements against (a) the redevelopments to whom the land in the project is sold, (b) whether it is intended that the manner and method of assessment shall be in accordance with the applicable provisions of the charter or otherwise; or (c) whether

the owners of the land who are permitted to participate in the project are to be required to pay their share of the costs of public site improvements, as provided for in the charter, and irrespective as to whether the purchasers of the land are exempted from such payment. [Clk. Tr. Vol. 1, p. 161, line 30, to p. 162, line 17.]

Plaintiff's further contended that such an interpretation constituted a granting of special privileges or immunities to an arbitrary class of persons, to wit, the developers, contrary to the provisions of Section 21, Article I of the California Constitution, and the 14th amendment of the United States Constitution. [Clk. Tr. Vol. 1, p. 166, lines 22-32.]

With respect to this contention, the court made the following finding of fact,

> "That the provisions in the final plan requiring that the agency sell or lease the property in the project area for its fair value for uses in accordance with the plan are valid and constitute an adequate standard to guide the agency in entering into sales and leases."

On appeal before the District Court of Appeal, petitioners herein urged the provisions of the Redevelopment plan, which require an owner who agrees to participate in the redevelopment project, to assume financial responsibility for his pro rata share of the costs of the necessary public site improvements, while at the same time exempting the redevelopment agency from a similar financial responsibility violates the equal protection provisions of the 14th amendment of the United States Constitution. (Opening Brief of Appellants, Henry Goldman and Mae Goldman, pp. 114-115.)

Petitioners argued that the provisions of the redevelopment plan which require an owner who agrees to participate in the Re-development project to assume financial responsibility for his pro rata share of the costs of the necessary site improvements including any required installation of utilities, grading, street changes, and street improvements, while at the same time exempting the re-developers from a similar financial responsibility, violates the equal protection provisions of the 14th amendment of the United States Constitution and the California Constitution. (Petitioner's Opening Brief, pp. 117-118.)

Petitioners further argued

> "There are no provisions in the California Redevelopment law nor in the Federal Urban Renewal Act directing or authorizing a Municipality or a local Redevelopment Agency to impose upon owner-participants the obligations of contributing to the public site improvements, yet, at the same time exempt the redevelopers who may purchase the land from this identical obligation. This is an obligation imposed by the Redevelopment Plan, approved by the ordinance in this case upon the owner-participants, irrespective as to whether they participate by retaining ownership of their own land, or agree to buy additional adjacent land, or, participate in land set apart for such participation, not originally owned by the participants. In each of these instances, the owner-participant is required to pay a pro rata share of the cost of the new public site improvements which include the installation of utilities, grading, street changes and street improvements."

Petitioner further argued,

> "Without statutory extension, the Re-Developer is permitted to obtain a title to the identical land without assuming his pro rata share of the cost of the new site improvements related thereto, or, 'the installation of utilities, grading, street changes, and street improvements'." (Petitioners' Opening Brief, pp. 123-124.)

Petitioner further argued,

> "California Legislature has placed owner-participants in the same class as redevelopers. It has done so under the provisions of Section 33701 by providing that every Re-development plan shall provide for participation in the redevelopment of property in the project area by the owners of all or part of such property, if the owners agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area. It did not provide for participation upon the basis that the constitutional provisions against discrimination in the California or United States Constitution be unequally applied." (Petitioners Opening Brief, pp. 125-126.)

There are no provisions in the Redevelopment plan which require the Redevelopers to assume any financial responsibility for their pro rata share of the costs of the necessary site improvements or public improvements.

The only provisions pertaining to land disposition omit any reference thereto. This section provides

> "The agency plans to sell or lease the cleared land to private enterprises for at least a fair value for uses in accordance with the plan and also to

convey land to the community for public purposes. Such sales or leases shall be subject to such conditions and covenants running with the land as are necessary to ensure redevelopment in accord with the plan and the prevention of recurrence of blight." Sec. C. 6.

In re Opinion of the Justices (*Supreme Court of Mass,* 1955) 126 N. E. 2d 795, there was submitted to the Justices of the Supreme Court of the Senate questions relating to the constitutionality of a proposed act for the development of an area of about 28 acres of land principaliy used as a Railroad Yard the use of which was about to be abandoned. There were legislative declarations that the tax structure of the City is threatened by the fact that the area will not be usefully employed, that the development of the yard is necessary to support the economic well being of the City and state, that private enterprise without the aids provided in the act will not undertake orderly and integrated development, and that the public interest requires development including parks and a convention hall.

There was a provision for special treatment with respect to taxation.

In declaring the act to be unconstitutional the Supreme Court said,

> "Question 4 inquires whether the proposed act would violate the Fourteenth Amendment to the Constitution of the United States. That amendment provides that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' Equal protection of the laws requires of course that all persons in the same category

and in the same circumstances be treated alike. * * *

The proposed act would tax the property of the corporation upon a different and more favorable basis than that upon which similar property if other owners would be taxed and would thus violate the equal protection clause of the Fourteenth Amendment."

In *Ivanhoe Irrigation District v. All Parties*, 47 Cal. 2d 597, 636, the Supreme Court said:

"In addition to his right to due process, the land owner * * * is entitled to equal protection of the laws. Discrimination among water users in an irrigation district is expressly contrary to state law as expressed in the above-quoted section, 22250 of the Water Code. The well-established rule on this subject is expressed in City of Pasadena vs. Stinson, 91 Cal. 238, at pages 251 and 252, as follows: * * * Although the law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law."

See also:

Matter of Application of Miller, 162 Cal. 687, 689.

The Court added:

> "Thus to deprive members of the same class of their rights clearly results in an unlawful discrimination which as said in *Pasadena v. Stinson, supra,* 91 Cal. 238, is not 'founded upon some natural or intrinsic or constitutional distinction.'"

Conclusion.

It is respectfully submitted that for all the foregoing reasons a hearing should be granted to the Petitioners therein, and permission given for the filing of further briefs and oral argument.

PHILL SILVER,
Attorney for Defendants and Appellants,
Henry Goldman and May Goldman.

APPENDIX A.

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

The Community Redevelopment Agency of the City of Los Angeles, California, Petitioner and Respondent, vs. Henry Goldman, et al, Respondents to the Petition and Appellants.

Henry Goldman, et al, Plaintiffs and Appellants, vs. The City of Los Angeles, et al, Defendants and Respondents. Civil No. 26249

Filed Aug. 6, 1963.

Appeals from judgments of the Superior Court of Los Angeles County. Philip H. Richards, Judge.

For Petitioner and Respondent Community Redevelopment Agency: Adams, Duque & Hazeltine, Henry O. Duque, Bruce A. Beckman, Eugene B. Jacobs, General Counsel, George J. Roth, Senior Assistant Counsel.

For Respondents City and Council of the City of Los Angeles, Leon V. McCardle as Treasurer of the City: Roger Arnebergh, City Attorney, Bourke Jones, Assistant City Attorney and James A. Doherty, Assistant City Attorney.

For Appellants Goldman *et al:* Phil Silver.

For Appellant Babcock: Austin Clapp.

For Appellants Swigart, *et al:* Wadsworth, Fraser & McClung.

For Appellants Trautwein, *et al:* Floyd H. Norris.

For Appellants Redwine, *et al:* Gwyn S. Redwine

A special proceeding was brought by The Community Redevelopment Agency of the City of Los Angeles (hereinafter referred to as "Agency"), pursuant to sections 33955 through 33961 of the Health and Safety Code, to determine the validity of the redevelopment plan for the Bunker Hill Urban Renewal Project 1B (hereinafter called the "Bunker Hill project"); its authority to issue bonds to finance such project in part; the validity of such bonds to be issued by the Agency and for an injunction pursuant to Section 33961 of the Health and Safety Code permanently enjoining the institution by any person or organization of any action or proceeding raising any issue adjudicated or which could be adjudicated therein. Five separate actions are consolidated with said special proceeding. (Health & Saf. Code, § 33958.) The plaintiff or plaintiffs therein (hereinafter sometimes referred to as "objectors") are property owners within the project area and taxpayers of the City of Los Angeles, suing as property owners and taxpayers. The defendants in the actions are the Agency, the City of Los Angeles (hereinafter referred to as "City") and, in certain cases, the City Council of the City and the City Treasurer.

The complaints in these five actions are either for declaratory relief, for injunction, for writ of mandate or certiorari, or for judicial review pursuant to Health and Safety Code, section 33746. These five actions attack the proceedings of the Agency, the City and the Council leading up to the adoption and the adoption of the ordinance approving the final redevelopment plan. The plaintiffs in said actions, as respondents in the Agency proceeding, answered the petition setting up

defensively the same matters alleged in their several complaints.

The chronology of the Bunker Hill project proceedings is as follows in pertinent part:

April 15, 1948—Pursuant to section 33201[1] the Council adopted a resolution declaring a need for a redevelopment agency in the City of Los Angeles and thereafter the Mayor appointed five members of the Agency.

September 27, 1951—The Council adopted a resolution authorizing the Agency or the Los Angeles City Planning Commission (hereinafter called the "Planning Commission") to designate redevelopment areas (sections 33480-33481).

October 31, 1951—The Agency adopted a resolution designating fifteen areas within the City of Los Angeles as blighted and requiring study to determine if redevelopment projects within said areas were feasible. Included within Area No. 1, known as Center Redevelopment Area 1, is the area embraced within the Bunker Hill project. At the time of the designation of said Central Redevelopment Area 1 as a redevelopment area there existed, as required by sections 33451 and 33452 a City Planning Commission and a master community plan which had been adopted by the Planning Commission which included the matters set forth in section 33452.

August 11, 1955—The Planning Commission selected from within Central Redevelopment Area 1, the project area for the Bunker Hill project and formulat-

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[1]All section references are to the Health and Safety Code unless indicated to the contrary.

ed a preliminary plan therefor consisting of a preliminary report and a preliminary plan map (§33500).

August 15, 1955—The Planning Commission submitted said preliminary plan to the Agency and the Agency thereafter, with the cooperation of the Planning Commission, formulated and prepared a tenative plan which was approved by the Planning Commission on March 26, 1956. (§ 33502.)

March 21, 1956—Pursuant to sections 33530, 33534, and 33535, the Agency conducted a public hearing on the tentative plan after publication of notice thereof pursuant to section 33531 (the sufficiency of such publication of notice being an issue herein) and mailing of notice thereof pursuant to section 33533. At said hearing opportunity was given to all interested persons and public and private agencies to be heard and to submit alternative redevelopment plans for the project area.

June 15, 1956—The Agency submitted said tentative plan to the Council together with the Agency's report thereon in accordance with section 33560.

July 10, 1956, through September 6, 1956—Pursuant to sections 33562 through 33567, the Council conducted a hearing on the adoption of the tentative plan after fixing the date thereof and causing notice thereof to be published as required by section 33563. At such hearing the Council considered the report of the Agency and the recommendation and report of the Planning Commission, considered the alternative redevelopment plan submitted to the Council, providing an opportunity for all interested persons and agencies to be heard, received evidence and communications presented with

respect to the tentative plan and alternative plans and submitted the alternative plans and suggested modifications of the tentative plan to the Agency and to the Planning Commission for recommendations and reports, which recommendations and reports were submitted to the Council within thirty days thereafter.

November 7, 1956—The Council adopted ordinance No. 108,424 approving the tentative plan (said ordinance included the matters specified by section 33571).

Thereafter, pursuant to section 33573 the Council caused to be filed with the County Recorder a description of the land within the project area and a statement that proceedings for the redevelopment of said area had been commenced under the Community Redevelopment Law. At all times since the adoption of the tentative plan, pursuant to section 33574, all applicants for building permits in the project area have been advised by the Building and Safety Department of the City that sites for such building permits where sought were within a proposed redevelopment area.

May 7, 1958—Pursuant to sections 33700 through 33710, the Agency with the cooperation of the Planning Commission, formulated and adopted a redevelopment plan (hereinafter referred to as the "final plan") for the project area.

May 7, 1958—Pursuant to section 33701, and prior to the adoption of the final plan, the Agency adopted and made available for public inspection rules implementing the provisions for owner participation as provided in the final plan.

May 8, 1958—Pursuant to section 33704, the final plan was submitted to the Planning Commission for

its report and recommendation. On May 15, 1958, the Planning Commission considered and approved the final plan and determined that it conformed to the adopted master community plan and on May 16, 1958, the Planning Commission made and filed with the Agency its report and recommendation that the final plan be approved.

May 21, 1958—The Agency submitted the final plan together with the report and recommendation of the Planning Commission to the Council. The Council fixed a time and place for public hearing on the adoption of the final plan and caused notice thereof to be published pursuant to section 33730.

June 24, 1958, through January 8, 1959—Pursuant to sections 33730 through 33741, the Council conducted a public hearing on the final plan on various dates, at which hearing the Council considered the final plan, all alternative plans submitted, and all evidence and testimony for and against the adoption of the final plan and the alternative plans.

March 31, 1958—The Council adopted ordinance No. 113,231 in form and substance as required by law, approving and adopting the final plan as the official redevelopment plan for the project area.

October 6, 1959—The Agency adopted its resolution authorizing the issuance of bonds of an aggregate face value of not to exceed $20,000,000 the principal and interest of which are to be payable from funds which include taxes allocated to the Agency pursuant to sections 33950 through 33954.

Trial was had in the Superior Court of Los Angeles County on various dates between November 4, 1960

and December 8, 1960. On April 20, 1961, Judge Richards issued a lengthy and scholary memorandum decision.

On July 21, 1961, findings of fact and conclusions of law were filed in each action. On July 25, 1961, judgment in favor of the Agency was entered in the Agency's special proceeding in rem. In substance it was therein decreed that the Agency is lawfully established and entitled to transact business and exercise its powers pursuant to the redevelopment law; that all acts and proceedings theretofore taken by the Agency, City Planning Commission and City Council in the designation of Central Redevelopment Area No. 1, the designation of the project area, the formulation and adoption of the preliminary plan, the formulation and adoption of the tentative plan, and the formulation and adoption of the final redevelopment plan were legal and valid; that the final plan as finally adopted by the City Council on March 31, 1959, by ordinance No. 113,231, is legal, valid and effective in all respects; that the Agency has lawful authority to issue bonds pursuant to the provisions of the final plan; that all acts and proceedings proposed to be taken thereafter for the authorization, issuance, sale and delivery of said bonds and for the payment of the principal thereof and the interest thereon were and are legal and valid in all respects; that the bonds when duly issued as provided in Agency resolution 193 will be valid in all respects; enjoined the institution by any person of any action or proceeding raising any issue or matter adjudicated therein or which could have been adjudicated therein, and awarded the Agency its costs of suit incurred therein.

Judgment was also entered on July 25, 1961, for the Agency, the City, the City Council and the City Treasurer in (as appropriate) the Goldman, Babcock, Swigart, Trautwein and Redwine actions. The various appeals followed.

The first contention raised on this appeal is that the trial court failed to accord the proper scope of review to the acts of the Agency and Council.[2]

Respondent Agency concedes that the "City Council, when acting under the Redevelopment Law, acted as an administrative arm of the state to carry out state objectives. In doing so it functioned under state law, not under the City Charter . . . That local legislative bodies such as the City Council herein act as state administrative agencies when acting under the Redevelopment Laws was explicitly established by *Fellom v. Redevelopment Agency,* 157 Cal. App. 2d 243, 247-248 (1954) [hearing denied]: and *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 459, 461-463 (1958) [hearing denied]." (Italics indicated.)

Respondent Agency relies in large part upon the case of *Babcock v. Community Redev. Agency,* 148 Cal. App. 2d 38, for the proposition that the court is not empowered to substitute its determination for the determination of the Agency or the Council in the absence of abuse of discretion, fraud, collusion, or bad faith on the part of the Agency or the Council.

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[2]The trial court took the position that "in proceeding under the Community Redevelopment Law, the Agency and the Council are performing legislative functions" and limited his review to the question of whether there was any reasonable basis for the action taken by the administrative bodies, and he refused to exercise his independent judgment on the evidence.

In the *Babcock* case, plaintiff sought to enjoin the Agency from contracting with the Federal Government or expending public funds for the redevelopment area and further sought a declaratory judgment that the jurisdictional prerequisites for the redevelopment of the project area did not exist. The trial court sustained demurrers and plaintiff appealed from the judgment dismissing the action.

Division 3 of the District Court of Appeal, speaking through Mr. Justice Parker Wood with the concurrence of Mr. Justice Shinn, stated that many of the allegations were conclusions of law and were thus not admitted by the demurrer. The court thereafter indicated that the court is not empowered to substitute its determination for the determination of the Agency or Council.

Mr. Justice Vallée concurred on the sole ground that plaintiff's action was premature since the Agency had not yet prepared even a preliminary plan and had, therefore, not determined that the area should be redeveloped. However, Mr. Justice Vallée concluded that the Agency is a state Agency whose final administrative orders or decisions are reviewable by a court exercising its independent judgment on the evidence.

In examining the record on appeal of the *Babcock* case, it appears that neither side cited section 33746 of the Health and Safety Code to the District Court of Appeal and that neither the majority opinion nor the concurring opinion mentioned said section.

Subsequent to the *Babcock* decision, section 33746 was amended to provide specifically for judicial review of the findings and determinations of the Agency and

Council.[3] We believe that the legislature intended to provide for a broader scope of review than that which existed prior to the amendments to section 33746 —that the trial court exercise its independent judgment on the evidence.

No useful purpose would be served by discussion of the numerous other contentions raised on this appeal. The judgments and each of them are reversed and the matter is remanded to the trial court with directions to accord the proper scope of review.

Fourt, *J.*

I concur:
Lillie, *J.*

I dissent:
Wood, *P. J.*

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[3]Section 33746 as amended Stats. 1957, c. 1695, p. 3069, § 5, provided in pertinent part as follows:

"The findings and determinations of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan or of any urban renewal plan or of any combination of such plans may be judicially reviewed by a court of competent jurisdiction. Such action must be brought within 90 days after the date of adoption of the ordinance approving the plan. No action shall be brought prior to the adoption of the final redevelopment plan." (This act was in effect at the time of the adoption of the final plan by the City Council.)

Section 33746 as amended Stats. 1959, c. 1102, p. 3181, § 18, provided as follows:

"The findings and determinations of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan may be judicially reviewed by a court of competent jurisdiction. Such action must be brought within 60 days after the date of adoption of the ordinance approving the plan. No action shall be brought prior to the adoption of the final redevelopment plan."

[Note: Section 33746 was again amended in 1961 - Stats. 1961, c. 1557, p. 3381, § 3.]

APPENDIX B.

Opinion of the Supreme Court of the State of California.

[L. A. No. 26751. In Bank. Feb. 27, 1964.]

In the Matter of the Redevelopment Plan for the Bunker Hill Urban Renewal Project 1 B of the Community Redevelopment Agency of the City of Los Angeles, California; and of Bonds Therefor. Community Redevelopment Agency of the City of Los Angeles, California, Plaintiff and Respondent, v. Henry Goldman, et al., Defendants and Appellants. (And Five Consolidated Cases.)

Appeals from judgments of the Superior Court of Los Angeles County. Philip H. Richards, Judge. One judgment affirmed in part and reversed in part with directions; other judgments affirmed.

Proceeding by a city redevelopment agency to determine validity of a redevelopment plan for an urban renewal project, its authority to issue bonds to finance such project in part, and validity of bonds to be issued by the agency; and for an injunction permanently enjoining the institution by any person or organization of any action or proceeding raising any issue adjudicated or which could be adjudicated in such proceeding; and five consolidated actions by property owners within project area and taxpayers of city for declaratory relief, injunction, writ of mandate or certiorari or for judicial review. Judgment in special proceeding reversed with directions as to awarding of costs against defendants and otherwise affirmed; other judgments affirmed.

Phill Silver, Austin Clapp, Wadsworth, Fraser & McClung, Charles E. McClung, Floyd H. Norris, Gwyn S. Redwine and Kent H. Redwine for Defendants and Appellants.

G. G. Baumen as Amicus Curiae on behalf of Defendants and Appellants.

Adams, Duque & Hazeltine, Henry O. Duque, Bruce A. Beckman, Eugene B. Jacobs, George J. Roth, Roger Arnebergh, City Attorney, James A. Doherty and Bourke Jones, Assistant City Attorneys, for Plaintiff and Respondent.

Bruce F. Allen, Joseph E. Coomes, Jr., and McDonough. Holland, Schwartz, Allen & Wahrhaftig as Amici Curiae on behalf of Plaintiff and Respondent.

Schauer, J.—This appeal is from judgments rendered by the superior court in a special proceeding brought by the Community Redevelopment Agency of the City of Los Angeles (hereinafter called the agency), and in five separate actions which were consolidated for trial with such special proceeding. The agency began its proceeding in December 1959, pursuant to sections 33955 through 33961 of the Health and Safety Code[1] (Stats.

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[1]Unless otherwise stated, all section references are to the Community Redevelopment Law, found in sections 33000 et seq. of the Health and Safety Code, *as the designated sections read at the respectively pertinent times.*

To alert the reader who may hereafter undertake to consult the subject statutes in connection with the opinion text, we emphasize that the redevelopment law has been frequently amended; and further, that in 1963 many sections thereof were repealed and recast *under different section numbers* but "without . . . substantive change in the law." (Stats. 1963, ch. 1812, § 1, p. 3677.)

1959, ch. 1542, p. 3868 et seq.), to determine (1) the validity of the redevelopment plan for the Bunker Hill Urban Renewal Project 1B (hereinafter called the Bunker Hill project), (2) the agency's authority to issue bonds to finance the project in part, (3) the validity of the bonds to be issued by the agency; and (4) for an injunction pursuant to section 33961 permanently enjoining the institution by any person or organization of any action or proceeding raising any issue adjudicated or which could be adjudicated in the subject proceeding. The plaintiffs in the five separate actions which were consolidated (§ 33958) with the agency's special proceeding (hereinafter sometimes called "objectors") are property owners within the project area and taxpayers of the City of Los Angeles, and suing as such. The defendants in the five actions are the agency, the City of Los Angeles (hereinafter called the city), and in certain cases the city council of the city and the city treasurer.

The complaints in the five actions are for declaratory relief, for injunction, for writ of mandate or certiorari, or for judicial review pursuant to section 33764. The actions attack the proceedings of the agency, the city, and the council leading up to the adoption and the adoption of the ordinance approving the final redevelopment plan. The plaintiffs in the actions, as respondents in the agency proceeding, filed answers in the proceeding setting up defensively the same matters alleged in their several complaints.

As will appear, we have concluded that the trial court correctly determined that the redevelopment plan should be upheld, and that the judgments to that effect should be affirmed, with the exception of the award of costs against certain objectors.

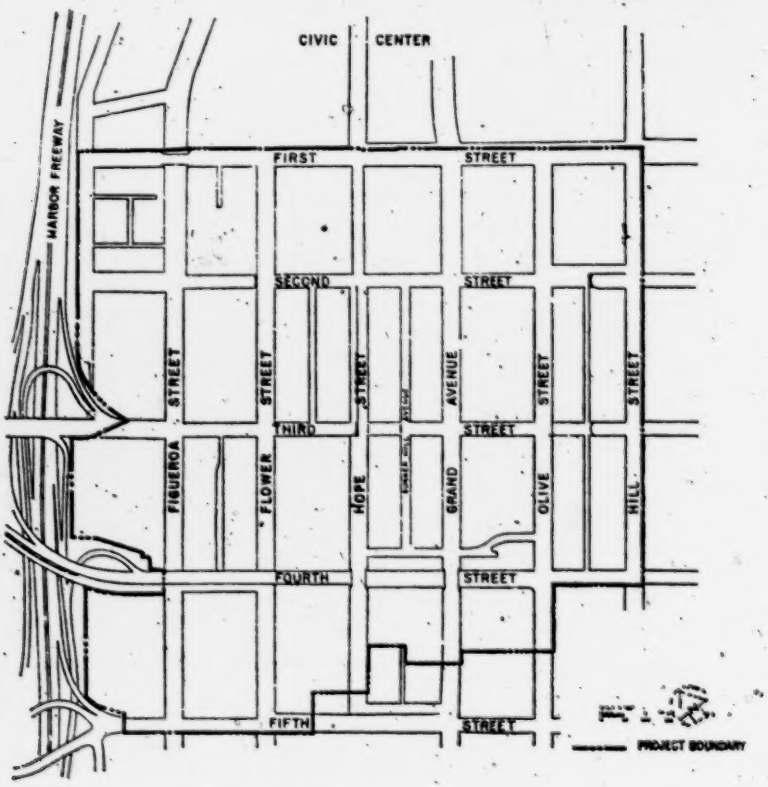
The chronology of the Bunker Hill Project proceedings is in pertinent part as follows:

April 15, 1948. Pursuant to section 33201 the council adopted a resolution declaring a need for a redevelopment agency in the City of Los Angeles and thereafter the mayor appointed five members of the agency.

September 27, 1951. The council adopted a resolution authorizing the agency or the Los Angeles City Planning Commission (hereinafter called the planning commission) to designate redevelopment areas. (§§ 33480, 33481.)

October 31, 1951. The agency adopted a resolution designating 15 areas within the City of Los Angeles as blighted and requiring study to determine if redevelopment projects within such districts were feasible. The property embraced within the subject Bunker Hill project is a portion of Central Redevelopment Area 1. At the time of the designation of Central Redevelopment Area 1 as a redevelopment area there existed, as required by sections 33451 and 33452, a city planning commission and a master community plan which had been adopted by the planning commission, and which plan included the specifications detailed in section 33452.

August 11, 1955. The planning commission selected the area for the Bunker Hill project and formulated a preliminary plan therefor consisting of a preliminary report and a preliminary plan map. (§ 33500.) The project area is delineated by the following sketch.



FOR ILLUSTRATIVE PURPOSES ONLY

BUNKER HILL URBAN RENEWAL PROJECT

August 15, 1955. The planning commission submitted such preliminary plan to the agency and the agency thereafter, with the cooperation of the planning commission, formulated and prepared a tentative plan which was approved by the planning commission on March 26, 1956. (§ 33502.)

March 21, 1956. Pursuant to sections 33530, 33534, and 33535 (see Stats. 1951, pp. 1934-1935), the agency conducted a public hearing on the tentative plan after publication of notice thereof pursuant to section 33531 and mailing of notice thereof pursuant to section 33533. At the hearing opportunity was given to all interested persons and public and private agencies to be heard and to submit alternative redevelopment plans for the project area.

June 15, 1956. The agency submitted the tentative plan to the council together with the agency's report thereon in accordance with section 33560.

July 10, 1956, through September 6, 1956. Pursuant to sections 33562 through 33567, the council conducted a hearing on the adoption of the tentative plan after fixing the date thereof and causing notice to be published as required by section 33563. At such hearing the council considered the report of the agency and the recommendation and report of the planning commission, considered the alternative redevelopment plan submitted to the council, provided an opportunity for all interested persons and agencies to be heard, received evidence and communications presented with respect to the tentative plan and alternative plan and submitted the alternative plan and suggested modifications of the tentative plan to the agency and to the planning commission for recommendations and reports, which recommendations and reports were submitted to the council within 30 days thereafter.

November 7, 1956. The council adopted Ordinance No. 108424, approving the tentative plan. The ordi-

nance included the matters enumerated by section 33571, among which were specifications of the "extent and character of blight."[2]

Thereafter, pursuant to section 33573 the council caused to be filed with the county recorder a description of the land within the project area and a statement that proceedings for redevelopment of the area had been commenced under the Community Redevelop-

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[2]In 1959 sections 33560 through 33575, which provided for a tentative plan, were repealed; and in 1961 section 33731 was amended to provide that upon presentation of the final plan "the legislative body shall find and determine that: (a) The project area is a blighted area. . . ." (Stats. 1961, ch. 1945.)

A "blighted area" which may become the subject of redevelopment under the Community Redevelopment Law is variously characterized by one or more of the conditions set forth in sections 33041 through 33044 (now §§ 33031-33034) of the Health and Safety Code. By section 33041, a blighted area is one "characterized by the existence of buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:

"(a) Defective design and character of physical construction.

"(b) Faulty interior arrangement and exterior spacing.

"(c) High density of population and overcrowding.

"(d) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities.

"(e) Age, obsolescence, deterioration; dilapidation, mixed character, or shifting of uses."

By section 33042, a blighted area is an area characterized, *inter alia*, by: "(a) An economic dislocation, deterioration, or disuse, resulting from faulty planning. (b) The subdividing . . . of lots of . . . inadequate size for proper usefulness and development. . . . (d) The existence of inadequate streets [and] open spaces." By section 33043, a blighted area is "characterized by a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered." By section 33044, a blighted area is characterized by, "In some parts" thereof, "a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful

ment Law. At all times following adoption of the tentative plan, pursuant to section 33574 all applicants for building permits within the project area have been advised by the building and safety department of the city that such sites were within a proposed redevelopment area.

May 7, 1958. Pursuant to sections 33700 through 33710, the agency, with the cooperation of the planning commission, formulated and adopted a redevel-

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and valuable for contributing to the public health, safety, and welfare."

As required by section 33571, the city council in adopting the tentative plan included in the ordinance a statement of findings showing the extent and character of blight, obsolescence and substandard conditions in the area and their injurious and detrimental effects upon the public health, safety and general welfare. The statement of such findings, which the trial court found to be adequately supported by evidence adduced before the council at the hearing on the tentative plan, is as follows:

"Sec. 5. It is further found and determined that there exist in the Bunker Hill Urban Renewal Project area conditions of blight as defined in the Community Redevelopment Law which are social and economic liabilities requiring redevelopment in the interest of the health, safety and general welfare of the people of this City and of the State. Such conditions are conducive to ill health and transmission of disease, infant mortality, juvenile delinquency and crime, as follows:

"a) The project area consists generally of an incompatible mixture of buildings used for residential, commercial, industrial, residential and commercial mixed; structures intended for commercial use which have been converted to residential purposes, and vice versa; together with vacant land, and open land used for commercial purposes.

"There are approximately 477 structures in the area, of which 340 are residential, 132 are non-residential and five are public. The non-residential structures consist of commercial and industrial buildings.

"b) The residential structures contain dwelling units of which over 95 per cent were constructed before 1919. A very large percentage of said residential structures were constructed before 1900 or shortly thereafter. Said structures have faulty interior arrangement and exterior spacing, and by reason of age, obsolescence, and deterioration, have inadequate provision for ventilation, light, sanitation and open spaces.

opment plan (hereinafter referred to as the final plan) for the project area. Furthermore, pursuant to section 33701, and prior to the adoption of the final plan, the agency adopted and made available for public inspection rules implementing the provisions for owner participation as provided in the final plan.

May 8, 1958. Obedient to section 33704, the final plan was submitted to the planning commission for its report and recommendation. On May 15, 1958, the

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"c) The survey made by the Health Department of the City of Los Angeles in accordance with the American Public Health Association technique, found 63.4 per cent of the residential structures in the area were classed as sub-standard or slum and of the remainder 20.8 per cent were poor and 15.8 per cent were acceptable. More than 55 per cent of said residential structures were in need of major repairs. Said survey further found that practically all of the former single family dwellings have been converted to incompatible type of living accommodations most of which were within the category of substandard or slum; that the standards generally as to the dwelling unit conditions were primarily substandard to extremely substandard in nature; and that 1224 dwelling units in 38 structures were illegally occupied, and 4835 rooms in 271 structures were substandard as to room area.

"d) There exists in the area an overcrowding of structures on the land, due to the fact that said structures were built prior to the adoption of planning and zoning requirements relating to the proper location of structures on the land to provide yard area, light, air and privacy and to prevent the spread of fire. On many parcels of land buildings two or more stories in height were built on or near the side lot lines and in several instances the eaves of one building overhang the eaves of another building.

"e) The area contains old, substandard buildings, mostly frame, from one to approximately ten stories. Many of the buildings are built on the down slope of the hill with one or two stories on the street front and as many as eight on the rear, making fire fighting and rescue operations practically impossible. These conditions, combined with overcrowding of structures on the land, the almost non-existence of fire walls and vertical openings, and the limited escape facilities, create one of the most serious fire and life hazards in the City of Los Angeles.

"f) The project area is characterized by highly irregular topography, with steep slopes and grades, sharp palisades and unusable lands, which in the past have required tunnels, a cable

planning commission considered and approved the final plan and determined that it conformed to the adopted master community plan and on May 16, 1958, the planning commission made and filed with the agency its report and recommendation that the final plan be approved.

May 21, 1958. The agency submitted the final plan together with the report and recommendation of the planning commission to the council. The council

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railroad and deep street cuts to provide some accessibility to or through the area, all of which conditions of the site not only contribute to serious fire and life hazards, inadequate streets and traffic bottlenecks, but further preclude the creation of desirable and adequate building sites for the proper utilization of the area, resulting in a stagnant and unproductive condition of land otherwise useful and valuable for contributing to the public health, safety and welfare.

"g) In many instances parcels of land are of such shape, size or topographical character, that they are inadequate for proper usefulness or development without the public assembly of such lands by the power of eminent domain, the clearance, site preparation, and upgrading of the entire project area to protect and promote the sound development of the project area and the general welfare of the community.

"h) There exist in the area inadequate streets, Clay St. being only 20 feet wide and Cinnabar St. only 30 feet wide. Hope St. has a divided gradient between Second and Third Streets; and in addition, Grand Ave., Flower St., Second and Olive Streets have steep grades. Such conditions are hazardous and tend to prevent proper improvement of the area.

"Sec. 6. It is further found and determined that:

"a) The conditions of blight existing in the area tend to further obsolescence, deterioration and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize or rehabilitate his property while the condition of the neighboring properties remains unchanged;

"b) The conditions of blight existing in the area contribute to a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety and welfare.

"c) The conditions of blight existing in the project area contribute substantially and increasingly to the problem and cost of preserving the public health and safety, and the maintenance of adequate police, fire and accident protection."

fixed a time and place for public hearing on the proposed adoption of the final plan and caused notice thereof to be published, pursuant to section 33730. (Stats. 1957, ch. 1696, p. 3069.)

June 24, 1958, through January 8, 1959. As directed by sections 33730 through 33741, the council conducted a public hearing on the final plan on various dates, at which hearing the council considered the final plan, all alternative plans submitted, and all evidence and testimony for and against the adoption of the final plan and the alternative plans.

March 31, 1959. The council adopted ordinance No. 113,231 in form and substance as required by law, approving and adopting the final plan as the official redevelopment plan for the project area.

October 6, 1959. The agency adopted its resolution No. 193 authorizing the issuance of bonds of an aggregate face value of not to exceed $20,000,000 the principal and interest of which are to be payable from funds which include taxes allocated to the agency pursuant to sections 33950 through 33954.

May 25, 1959 - July 25, 1961. The subject actions and the agency's special proceeding (the latter was filed December 28, 1959) were brought, trial was had, findings of fact and conclusions of law were filed, and judgments were entered in favor of the agency and (as appropriate) its codefendants. These appeals by most of the losing parties followed.

The judgment in the agency's special proceeding decrees in substance that the agency is lawfully established and entitled to transact business and exercise its powers pursuant to the redevelopment law; that

all acts and proceedings theretofore taken by the agency, city planning commission and city council in the designation of Central Redevelopment Area No. 1, the designation of the Bunker Hill project area, the formulation and adoption of the preliminary plan, the formulation and adoption of the tentative plan, and the formulation and adoption of the final redevelopment plan were legal and valid; that the final plan as adopted by the city council on March 31, 1959, by ordinance No. 113,231, is legal, valid and effective in all respects; that the agency has lawful authority to issue bonds pursuant to the provisions of the final plan; that all acts and proceedings already taken and those proposed to be taken thereafter (as provided in the agency resolution) for the authorization, issuance, sale and delivery of the bonds and for the payment of the principal thereof and the interest thereon were and are legal and valid in all respects; that the bonds when duly issued as provided in agency resolution 193 will be valid in all respects; enjoined the institution by any person of any action or proceeding raising any issue or matter adjudicated therein or which could have been adjudicated therein; and awarded the agency its costs of suit.

Various contentions are presented by the objectors in their challenges, on this appeal, to the proceedings below. We consider such contentions severally under the following 11 main divisions.

1. SCOPE OF REVIEW

The trial court in its memorandum of decision declared the premise that in reviewing proceedings had under the Community Redevelopment Law the deci-

sions of the agency and the council "as to matters of opinion and policy" will not be set aside by the courts unless there is no reasonable justification for their actions. In determining whether or not such justification existed in the matter at bench the court reviewed the evidence upon which the agency and the council acted, and determined that the decisions and actions of those bodies were supported by substantial evidence; the court, however, declined to exercise its independent judgment upon such evidence, i.e., to reweigh it. The court also received additional evidence in the hearings before it "in order to determine the existence or non-existence or reasonable justification for such acts of the agency and the council and as to whether there was an abuse of descretion, fraud, collusion or bad faith."

In *Babcock & Community Redevelopment Agency* (1957) 148 Cal.App.2d 38 [306 P.2d 513], an earlier proceeding brought by one of the present objectors to enjoin the agency from proceeding with the Bunker Hill redevelopment, it was held (p. 49 [3]), "The agency and the legislative body (city council) have authority to designate redevelopment areas, and a court is not empowered to substitute its determination for the determination of the agency or the legislative body in the absence of abuse of discretion, fraud, collusion, or bad faith on the part of the agency or the legislative body." At the time of the *Babcock* decision section 33746 provided so far as here material that "Any action to contest the validity of the proceedings for the adoption of a redevelopment plan is barred upon the expiration of . . . 30 days [after a specified cutoff date]. In any action commenced after

the expiration of the 30-day period, except as to matters affecting jurisdiction, the validity of the proceedings is conclusively presumed."

Thereafter section 33746 was amended in 1957 (prior to adoption of the final plan herein) to provide in pertinent part that "The findings and determinations of any agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan . . . may be judicially reviewed by a court of competent jurisdiction."[3] (Stats. 1957, ch. 1696.)

Objectors Babcock and Swigart, who seek review by mandamus, urge that the intent of the 1957 amendment to section 33746 was to modify the rule of the *Babcock* case and to provide for a broader type of judicial review; i.e., for review under section 1094.5 of the Code of Civil Procedure, and, more particularly, for the exercise by the trial court of its independent judgment on the evidence, especially the evidence with respect to blight. This argument is not persuasive.

The mere addition by the 1957 amendment of the express declaration in section 33746 that "The findings and determinations . . . may be judicially reviewed . . ." appears insufficient to abrogate the established rule that on review by mandamus of the discretion

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[3]In 1961 the quoted provision was deleted from section 33746 (renumbered § 33500 in 1963) by amendment. The section as so amended reads: "No action attacking or otherwise questioning the validity of any redevelopment plan, or the adoption or approval of such plan, *or any of the findings or determinations of the agency or the legislative body* in connection with such plan shall be brought prior to the adoption of the redevelopment plan nor at any time after the elapse of 60 days from and after the date of adoption of the ordinance adopting the plan." (Stats. 1961, ch. 1557; Stats. 1963, ch. 1812; italics added.)

vested in a *local* administrative board, the court will not exercise an independent judgment on the evidence, but will limit its review to determining whether there was substantial evidence before the board to support the latter's decision. (See *Albonico v. Madera Irr. Dist.* (1960) 53 Cal.2d 735, 739 [2] [3 Cal. Rptr. 343, 350 P. 2d 95]; and cases there cited.) This rule, of course, applies also to state agencies whose jurisdiction is limited, rather than statewide (see *Keenan v. San Francisco Unified School Dist.* (1950) 34 Cal. 2d 708, 714-715 [6] [214 P.2d 382]); thus, terming the city council a state agency or an administrative arm of the state when acting in redevelopment matters (see *Andrews v. City of San Bernardino* (1959) 175 Cal. App. 2d 459, 462 [2a] [346 P.2d 457]; *Fellom v. Redevelopment Agency* (1958) 157 Cal. App. 2d 243, 247-248 [3] [320 P.2d 884]) lends no comfort to the position of objectors here, as its jurisdiction is local only. (See §§ 33278.)

Code of Civil Procedure section 1094.5 deals with review by mandamus of (subd. (a)) the "findings" and "the determination of facts" of administrative bodies both in cases where (subd. (c)) "the court is authorized by law to exercise its independent judgment on the evidence" (i.e., where the administrative body is statewide, see *Temescal Water Co. v. Department of Public Works* (1955) 44 Cal.2d 90, 105 [9] [290 P.2d 1]; 2 Cal.Jur.2d, Adm. Law § 220, p. 363; §§ 230, 231, pp. 383-386, and cases there cited), and in "all other cases." There is nothing in the language of section 33746 specifying that "The findings and determination . . . may be judicially reviewed . . ." which indicates a legislative intent that the court shall apply

the statewide agency rule and exercise its independent judgment on the evidence, rather than follow the substantial evidence rule which governs in other cases. Thus, it becomes immaterial whether the actions of the agency and of the city council in adoption of the Bunker Hill project be termed "legislative" (see *Hunter v. Adams* (1960) 180 Cal.App.2d 511, 517, 519 [5a] [4 Cal.Rptr. 776]), or "administrative" (see *Andrews v. City of San Bernardino* (1959) *supra,* 175 Cal.App.2d 459, 461); in either event the trial court was correct in its refusal to reweigh the evidence and in confining itself to determining whether the findings and determinations of the inferior bodies were supported by substantial evidence. (See also *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833 [1] [27 Cal.Rptr. 19, 377 P.2d 83].)

Objectors Babcock and Swigart urge further, however, that if the agency is successful in this case, then "in their condemnation action they will plead this validation case as a conclusive determination of the public use."

The confirmation (or validation) act (§§ 33955 through 33961) pursuant to which the agency brought its subject special proceeding was enacted in 1959. Section 33955 thereof provided:

"An agency which proposes to issue and sell bonds to finance or refinance, in whole or in part, a redevelopment . . . project . . . may, at any time after the effective date of the ordinance approving such plan and after the adoption of a resolution authorizing the issuance of bonds, bring a special proceeding in the superior court . . . to determine its authority to issue such bonds, the validity of said bonds, and the validity

of such redevelopment or renewal plan, including, without limiting the generality of the foregoing, the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the redevelopment . . . area, the designation of the project area, the formulation of the preliminary plan, and the adoption of the redevelopment . . . plan, and also including the legality and validity of the redevelopment . . . plan finally adopted and the legality and validity of all proceedings theretofore taken, and (as provided in said resolution) proposed to be taken, for the authorization, issuance, sale and delivery of said bonds and for the payment of the principal thereof and interest thereon." (Stats. 1959, ch. 1542, §1, p. 3868.)

Objectors urge that if the Bunker Hill project area is not blighted there is no public use; that the determination by the city council of blight is a determination of public use, a judicial rather than legislative question (see *City & County of San Francisco v. Ross* (1955) 44 Cal.2d 52, 57-59 [3-9] [279 P.2d 529]); and that objectors should not be foreclosed from challenging such determination. It appears to be accepted law, however, that redevelopment of blighted areas is a public use. (See *Redevelopment Agency v. Hayes* (1954) 122 Cal.App.2d 777, 789-790 [4], 802-804 [11-12] [266 P.2d 105].) Moreover, objectors are being accorded a judicial determination on the issue of blight through the substantial evidence review made in the subject proceeding by the trial court, and which is now before us on appeal. As is apparent from what has been said hereinabove, judicial determination

does not, of course, inevitably mean that the courts will reweigh the evidence on which findings of an inferior tribunal or body are based.

In *In re Central Irrigation Dist.* (1897) 117 Cal.382 [49 P.354], cited by objector Babcock, the court simply applied the law to undisputed facts, and did not reweigh or exercise an independent judgment upon disputed evidence or upon matters of opinion or policy, as objectors would have the court do here. That case lends no support to objectors' position.

The trial court was correct in its refusal to exercise its independent judgment on the evidence upon which the agency and the city council acted.

2. MR. SESNON'S ELIGIBILITY AS AGENCY MEMBER

Following adoption by the city council in 1948 of the resolution declaring the need for a redevelopment agency (§ 33201), the mayor undertook to appoint "five resident electors of the community as members of the agency" (§ 33230), and in November 1948 the council approved the appointments. Mr. William T. Sesnon, Jr., who was one of those so appointed, continued to be a member of the agency at all times here involved. The adoption by the agency of the tentative plan in June 1956, and of the owner-participation rules and the final plan in May 1958, was in each case by three members of the agency, including Mr. Sesnon.

Objector Babcock contends that at such times Mr. Sesnon was a resident elector of the City of Beverly

Hills, California, and not of the City of Los Angeles, and therefore not qualified to act as agency member, and that because his presence was necessary "to constitute a quorum, no quorum was present and the purported actions so taken by the Agency were and are invalid."

The trial court, citing sections 20 and 21 of the Elections Code and referring to evidence that for some time prior to July 28, 1948, Mr. Sesnon was a registered voter of Beverly Hills and on that date executed a new affidavit of registration giving a residence address in the City of Los Angeles, expressed the view that "Were this a direct attack by quo warranto as to his position as an Agency member or a challenge to him as a voter, considerable doubt would exist as to his status as an 'elector' of the City of Los Angeles." However, concluded the court, Mr. Sesnon's status as an "elector" cannot be thus collaterally attacked in this proceeding and, in any event, he was a de facto member of the agency and thus the requisite quorum was present and voted on the matters in issue. In this the court was correct.

The de facto doctrine in sustaining official acts is well established. Present a de jure office, "Persons claiming to be public officers while in possession of an office, ostensibly exercising their functions lawfully and with the acquiescence of the public, are de facto officers. . . . The lawful acts of an officer de facto, so far as the rights of third persons are concerned, are,

if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it." (*Town of Susanville v. Long* (1904) 144 Cal. 362, 365 [77 P. 987]; see also *Oakland Paving Co. v. Donovan* (1912) 19 Cal.App. 488, 494-496 [126 P. 388]; *Clark v. City of Manhattan Beach* (1917) 175 Cal. 637, 639 [166 P. 806, 1 A.L.R. 1532].) The facts as to existence of a de jure office of member of a redevelopment agency (see § 33200), that Mr. Sesnon acted publicly as such member under color of an appointment, and that it was generally assumed and accepted that he was a member of the agency were found by the trial court to be unassailable and meet no challenge on appeal. Hence, so far as this proceeding is concerned, Mr. Sesnon's acts are to be considered valid.

It is likewise established that the right of a de facto officer to an office cannot be collaterally attacked. (*Oakland Paving Co. v. Donovan* (1912) *supra*, at p. 496; *Town of Susanville v. Long* (1904) *supra*, at p. 365.) A right to hold office may not be collaterally attacked by a challenge to the official acts performed by the person holding such office. (*Matter of Danford* (1910) 157 Cal. 425, 431 [108 P. 322].) The objectors' challenge in this proceeding is to the acts performed by Mr. Sesnon and not to his office and hence such challenge is collateral.

3. SUFFICIENCY OF PUBLICATION OF NOTICE OF AGENCY HEARING ON TENTATIVE PLAN

Section 33530, as effective in 1956, provided that "Before submitting the tentative plan to the legislative body the agency shall conduct a public hearing on it." Section 33531 stated that "The agency shall publish notice of the hearing not less than once a week for four successive weeks prior to the hearing. . . ." Here, the notice of such hearing was published February 28, 1956, March 6, 1956, March 13, 1956, and March 20, 1956, and the hearing was held by the agency on March 21, 1956. At that time section 6064 of the Government Code, found in the article having to do generally with manner of publication, provided that "Publication of notice pursuant to this section shall be once a week for four successive weeks. Four publications, whether in a daily or weekly newspaper, are sufficient. The period of notice commences upon the first day of publication and terminates at the end of the fourth week thereafter." (Stats. 1949, ch. 1587.)

Objector Trautwein argues that since the agency hearing on the tentative plan was held prior to expiration of the period of published notice as specified by section 6064 of the Government Code, a procedural deficiency thereby occurred which was jurisdictional and violated the requirements of due process, thus rendering subsequent proceedings on the entire Bunker Hill project fatally defective. The particular "juris-

dictional" prejudice which objector asserts is that he was denied "an opportunity to file an alternate plan by reason of the failure of the Agency to comply with the statute." (See §§ 33534, 33535.)

This contention is not substantiated. In the first place, section 33533 (Health and Safety Code) provided for mailing of copy of notice of the hearing "to the last known assessee of each parcel of land within the area designated in the tentative plan, at his last known address. . . ." and no complaint is made of the manner in which this requirement was fulfilled or that any property owner failed to receive the mailed notice. In the second place, after the agency's hearing the city council also held a hearing on the tentative plan, following notice of which no complaint is here made. (§§33562-33565.) Section 33566 provided that "At any time prior to the adoption of a tentative plan by the legislative body, any qualified person . . . may present to the legislative body an alternative plan for the project area," and section 33567 specified that "Any alternative plan . . . submitted to the legislative body which has not already been considered and reported on by the agency . . . shall be referred to them for consideration and report. The agency shall report to the legislative body and make its recommendations on the alternative plan within 30 days. . . . The hearing on a tentative plan may be postponed or continued from time to time to allow time for the agency . . . to make such report." Thus, although objector Trautwein has not shown that he had an alternate plan, no reason appears why, if he did have one, he did not present it to the city council at the time that body held a hearing on the tentative plan.

Moreover, it does not appear that any objection was raised at the agency hearing on the tentative plan on the ground that the publication of notice was defective; not does it appear that the issue was raised at the hearing before the council on either the tentative or the final plan. No prejudice is shown.

Further, section 33959 of the confirmation act, pursuant to which the agency brought the subject special proceeding, directed that in such a proceeding "the court shall disregard any error, irregularity or omission which did not affect the substantial rights of the parties." (Stats. 1959, ch. 1542, p. 3870.) As held by the trial court, this provision is in the nature of a curative clause, and it is established that unless there is an absence of due process the Legislature, with respect to the minutiae of the number of publications, "might omit them altogether without affecting the validity of the proceeding, [and] so also it may provide that defects or failures to comply shall not be fatal." *(Ells v. Board of Supervisors* (1918) 38 Cal. App. 480, 484 [176 P. 709].) And as declared in *Chase v. Trout* (1905) 146 Cal. 350, 359 [80 P. 81], "A curative statute or clause may preclude all investigation except 'the single inquiry whether, in the case presented, the effect of applying the statute is to deprive the party of his property without due process of law.'" (See also *Miller v. McKenna* (1944) 23 Cal. 2d 774, 781-782 [5] [147 P.2d 531]; *Redevelopment Agency v. Modell* (1960) 177 Cal.App.2d 321, 325-326 [4] [2 Cal.Rptr. 245]; *Rock Creek W. Dist. v. County of Calaveras* (1955) 133 Cal.App.2d 141, 146 [3] [283 P.2d 740].) No such deprivation of due process has occurred in the respect here considered.

4. BLIGHT

In addition to the council's findings as set forth in the footnote (fn. 2, *ante*), the condition of area blight was further established at the hearing on the final plan. A health department survey of December 1955 disclosed the following percentages in living conditions: extremely substandard 39.62 per cent, substandard 22.22 per cent; poor 19.92 per cent, and acceptable 18.24 per cent. A building and safety department survey of April 1957 discloses the following percentages in building conditions: dangerous (239 out of 395) 60 per cent, substandard 16 per cent, and standard 24 per cent. The area crime rate was testified to be double the city average and the arrest rate within the project area more than eight times the city average. There was testimony that the fire rate per acre was nearly nine times the city average and that the per acre cost of fire control for inspection was nearly eight times the city average. It was established that for the year 1957, the city tax revenue from the project area amounted to $106,120 and that the estimated cost to the city for fire, police and health services rendered to the project area was $754,101.

In the light of all the described conditions the trial court concluded that there was a reasonable basis for the finding and determination by the city council that the project area is blighted within the meaning of the Community Redevelopment Law.

Objector Babcock, whose property is at the southwest corner of Second Street and Grand Avenue, refers to "Extension of the Civic Center west of Hill Street, land acquisition and demolition of old struc-

tures by the County of Los Angeles between 1st and 2nd Streets, Broadway and Grand Avenue and construction of the Music Center nearby," and to testimony by one witness that "by reason of the Civic Center improvements north of First St., that it would be reasonable to expect certain areas south of First Street to be developed, within a block to three blocks of the courthouse." It is urged that given time, redevelopment of the project area would take place "without public intervention," and that therefore the finding of blight is unwarranted and unsupported. Such speculative argument cannot prevail, particularly at this stage of the proceedings, as against the existing conditions with which the agency, the city council, and the courts were (and are) obliged to deal.

5. AREA SOUTH OF FOURTH STREET

Prior to adoption of the tentative plan, an alternative plan for the project was filed with the agency (see § 33566) on behalf of objector Briggs Apartment Hotel Company (hereinafter called Briggs), which sought to eliminate from the project area that part thereof lying south of Fourth Street. Although this alternative plan was urged by Briggs at the public hearing before the city council on the tentative plan and again at that on the final plan, the council rejected it on both occasions.

It is contended that failure of the council to adopt the alternative plan eliminating that portion of the project area lying south of Fourth Street constituted an abuse of discretion in that such portion is not a blighted area within the meaning of the Community Redevelopment Law nor is it necessary for the ef-

fective redevelopment of the entire project area. (§ 33004.) This contention presents an issue which appears to have been closely balanced at the administrative level but the resolution of which cannot (upon the record and in the light of established law) be reversed or vacated by this court. However, it merits discussion.

As pointed out by the trial court (see also the area sketch, *ante*), the southern boundary of the project area at the westerly end begins at the intersection of the Harbor Freeway and Fifth Street and progresses easterly along Fifth Street to a point midway between lower and Hope Streets and then jogs in an uneven line approximately midway between Fourth and Fifth Streets to Olive Street, thus eliminating several large and modern buildings on the north side of Fifth Street such as the Sunkist Building, the Edison Building, the Biltmore Garage, and the Pacific Telephone and Telegraph Company Buildings. The project area line then turns north on Olive to Fourth Street and thence easterly to Hill Street, thus excluding all the buildings within the block bounded by Fourth, Fifth, Hill and Olive Streets which block is substantially developed with multistory buildings.

That part of the project area lying south of Fourth Street comprises portions of five city blocks aggregating 23.17 acres and constitutes approximately 17 per cent of the entire project area.

Briggs, the owner of the Barbara Worth Apartments, 407 South Hope Street, a cement and stucco apartment house of 57 units with private bath and not substandard, urges that the Fourth Street viaduct

and cut has created a natural barrier separating the territory south thereof from the main Bunker Hill area and that by reason of changes within the project area south of Fourth Street before the adoption of the final plan, such territory is not blighted within the Community Redevelopment Law so as to be properly includable in a redevelopment project.

Prior to 1954 there were approximately 40 major buildings in the project area lying south of Fourth Street, 15 of which were devoted to basically residential use, 14 of which were utilized for essentially commercial pursuits, 10 of which housed mixed residential and commercial uses, and one of which was occupied for public use. At the time of the adoption of the final plan, there were approximately 17 major buildings in the area, of which 9 were devoted primarily to residential or mixed use and 8 to commercial or public use.

The Pacific Telephone and Telegraph Company instituted an eminent domain proceeding to condemn and acquire property within the project area south of Fourth Street, fronting on Grand Avenue, and has expressed its intention to construct a building thereon; Pacific Mutual Life Insurance Company has acquired property within the project area south of Fourth Street, and has expressed its intention to construct a building thereon; and Greater Los Angeles Plans Inc., a nonprofit corporation, and Pacific Electric Railway Company each own property within the project area south of Fourth Street between Hope Street and the Harbor Freeway.

It appears that the Fourth Street cut caused the removal of approximately nine buildings and the land

acquisition by Pacific Telephone and Telegraph Company, and Pacific Telephone and Telegraph Company caused the removal of three residential buildings and that the others eliminated since 1954, mainly on Figueroa and Flower Streets, were removed by reason of obsolescence.

As of 1959, the land uses in the challenged area were 84.4 per cent open and unimproved; 8.66 per cent commercial and hotel and 8.94 per cent apartment and residential income. To offset any implication of "widely scattered ownership" (§ 33013), it was established that in 1959 the combined land assemblage represented by ownership by Pacific Electric Railway Company, B. F. Coulter Company, Greater Los Angeles Plans, Pacific Mutual Life Insurance Company, and Pacific Telephone and Telegraph Company accounted for 66.6 per cent of the land within the challenged area.

Briggs urges with merit that the characteristics of blight set forth in section 33041 are not likely to exist in an area having a land use such as the challenged area in 1959. It further urges with merit that the element of scattered ownership does not exist in the challenged area. It urges that if the alternative use of the westerly portion of the challenged area be for parking as shown on the proposed land use diagram of the final plan, that most of that portion is now being used for such purpose hence it cannot be considered as stagnant or unproductive. It was the opinion of two experienced real estate appraisers that the property within the challenged area if removed from the threat of condemnation would develop with private capital similarly to property south of Fifth Street.

In short, Briggs contends that whereas the project boundary "made sense" in 1950, it did not in 1959 when the council adopted the final plan, and that reasonable minds cannot differ as to the boundary under conditions in 1959.

The agency answers these contentions as follows: (1) Although some of the elements of blight may have been removed, the challenged area is still blighted within the Community Redevelopment Law, (2) an elimination of the challenged area would prevent a realignment of Flower Street which is an integral part of the redevelopment plan, (3) the topography of the challenged area particularly at Hope Street and Grand Avenue would lead to an island of blight between Fourth and Fifth Streets (4) the challenged area is includable in any event under section 33004 (now (§ 33321), and (5) the court may not substitute its judgment as to the wisdom of including the challenged area if there is any reasonable justification for the action of the legislative body.

We may recognize, as did the trial court, that unquestionably some of the elements or manifestations of blight as set forth in section 33041 have been eliminated by the demolition of a number of residential buildings south of Fourth Street between 1954 and 1959. Also, the recent acquisitions of properties by the Pacific Mutual Life Insurance Company and Pacific Telephone and Telegraph Company have removed those properties from a "stagnant and unproductive condition." (§ 33044.) On the other hand, from a general comparison of the area between Flower Street and the Freeway from Fourth to Fifth and the like

area from Fifth to Sixth Streets, a conclusion can reasonably be drawn that the territory west of Flower between Fourth and Fifth Streets is generally stagnant and is more closely allied to the stagnant condition of properties north of Fourth Street than it is to the development of properties south of Fifth Street. In this connection the trial court found that although the Fourth Street cut has physically severed the southern part of the project area at Hope Street and Grand Avenue, the challenged area south of Fourth Street is clearly integrated topographically with the area north of Fourth Street and this furnishes an additional reason for its inclusion in the redevelopment project.

Section 33004 (now § 33321) provides: "A redevelopment area need not be restricted to buildings, improvements, or lands which are detrimental or inimical to the public health, safety, or welfare, but may consist of an area in which such conditions predominate and injuriously affect the entire area. A redevelopment area may include lands, buildings, or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part."

Hence, even though the challenged area may not itself be blighted but its "inclusion is found necessary for the effective redevelopment of the area" of which it is a part, it is properly includable in the redevelopment project. The legislative body made such a determination and it cannot be said there is no reasonable basis for such determination even though it might appear that a redevelopment plan could be formulated without including the area south of Fourth Street.

It would appear that there is a rather close analogy between zoning and redevelopment in the matter of boundary determination. The observation of this court in the case of *Miller v. Board of Public Works* (1925) 195 Cal. 477, 495 [18] [234 P. 381, 38 A.L.R. 1479], is particularly apposite: "Somewhere the line of demarcation must be drawn, and it is primarily the province of the municipal body to which the zoning function is committed to draw that line of demarcation, and it is neither the province nor the duty of courts to interfere with the discretion with which such bodies are invested in the absence of a clear showing of an abuse of that discretion. In short, as previously indicated, we are not permitted to substitute our judgment for the legislative judgment."

In *Berman v. Parker* (1954) 348 U.S. 26 [75 S.Ct. 98, 99 L.Ed. 27], in answer to a contention that a certain developed property within a redevelopment area did not contribute to the blight and hence should not be included in the project area, the United States Supreme Court said at page 35 [99 L.Ed. 39]: "It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch." (See also *Grubstein v. Urban Renewal Agency of City of Tampa* (1959 Fla.) 115 So.2d 745, 748 [1,2]: "If the Project plan, as a whole, is valid, then the inclusion therein of sound structures or vacant land does not necessarily invalidate the Project. This is so because the purpose

of the Urban Renewal Law is to transform an entire slum *area* into a wholesome section of the community; and to deny the City the right to include within the area certain houses or buildings in good condition would, in some instances, defeat the over-all purpose of the statute and the Project.")

Contrary to the contentions of Briggs, the trial court found that all of the evidence received by the council did not show that the area south of Fourth Street did not require replanning and land assembly in the interests of the general welfare; it further found that the demolition of buildings south of Fourth Street has changed to some extent the geographical, economic and sociological conditions in that area; that such area has not become physically and economically disassociated from the rest of the project area; that all the evidence adduced at the public hearing on the final plan did not demonstrate that such area was not the stagnant and unproductive; and that the sole reason for the inclusion of that area was not to obtain the anticipated increase in tax revenue for the servicing of the agency bonds and financing the project.

Briggs has ably presented an issue which was close at the administrative and trial court levels. But we cannot tenably hold that as a matter of law there was no reasonable basis for rejection by the council of the alternative plan urged by Briggs; neither can we say that the trial court's relevant determination is unsupported.

6. COMPLIANCE OF FINAL PLAN WITH SECTION 33707.

Section 33707 (see present § 33333) provided:

"Every redevelopment plan shall show:

"(a) The amount of open space to be provided and street layout.

"(b) Limitations on type, size, height, number, and proposed use of buildings.

"(c) The number of dwelling units.

"(d) The property to be devoted to public purposes and the nature of such purposes.

"(e) Other covenants, conditions, and restrictions which the legislative body prescribes."[4]

The Swigart, Trautwein and Redwine actions each vigorously attack the final plan on the ground that it does not, for various reasons, comply with the provisions of section 33707.

Their contentions may be summarized as follows:

(1) The final plan does not set forth and there cannot be ascertained therefrom, the matters specified in subdivisions (a), (b), and (d) of section 33707;

(2) The final plan vests power in the agency not contemplated by law;

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[4]The redevelopment law further provides that at any time after adoption of a final plan by the legislative body, that body may, if it becomes necessary or desirable, amend such plan upon recommendation of the agency, after the agency has held a public hearing on the proposed amendment (upon published and mailed notice), and after the planning commission has likewise made its recommendation and report to the legislative body, and after the legislative body has then held a public hearing upon the proposed amendment (upon published notice). Each such amendment proceeding would appear to require minimum elapsed time of between 10 and 11 weeks. (§§ 33450-33455, formerly § 33747.)

(3) The plan is not "final" for the reason that many of the material phases are stated to be "tentative";

(4) The final plan is an unlawful restraint on alienation in reserving to the agency the uncontrolled power to invalidate reconveyances, leases and resubdivisions;

(5) By reason of the foregoing lack of compliance with the Community Redevelopment Law, the final plan contains no standards to guide the discretion of the agency in executing the plan, thus constituting an unlawful delegation of power to the agency by the council.

To place the contentions with respect to section 33707 in proper perspective, it must be understood that the matters referred to in that section are only a segment of the entire "redevelopment plan" or final plan, as it has been termed in this opinion. Other provisions to be made in the final plan include owner-participation (§ 33701), method of financing (§ 33706), acquisition of property (§ 33708), lease or sale of property (§ 33709), issuance of bonds (§ 33710), housing for displaced persons (§ 33738), and safeguards assuring redevelopment (§ 33741). It appears that a final plan under the Community Redevelopment Law does not require an architectural plan complete with engineers' specifications; it contemplates, rather, a comprehensive method or scheme of action; a way proposed to carry out within the essential framework of the law a particular project of redevelopment.

In our view *Redevelopment Agency v. Hayes*, (1954) *supra*, 122 Cal.App.2d 777, correctly sets forth the law

relating to the delegation of power to a redevelopment agency when it adopts *Belovsky v. Redevelopment Authority* (1947) 357 Pa. 329 [54 A.2d 277, 283, 172 A.L.R. 953], and quotes therefrom at page 807 [20] as follows: " 'The fact is, however, that the act contains as definite a description of what constitutes a blighted area as it is reasonably possible to express; in regard to such factors as the selection and the size of the areas to be redeveloped, the costs involved, and the exact form which the redevelopment in any particular case is to take, it was obviously impossible for the legislature to make detailed provisions or blueprints in advance for each operation. . . . All that the legislature could do, therefore, was to prescribe general rules and reasonably definite standards, leaving to the local authorities the preparation of the plans and specifications best adapted to accomplish in each instance the desired result, a function which obviously can be performed only by administrative bodies. While the legislature cannot delegate the power to make a law, it may, where necessary, confer authority and discretion in connection with the execution of the law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the act.' "

Although *Hayes* dealt with an agency power to determine blight, the principle announced appears equally applicable to the agency power to effectuate redevelopment.

In another redevelopment case, *People* ex rel. *Adamowski v. Chicago Land Clearance Com.* (1958) 14 Ill.2d 74 [150 N.E.2d 792, 796 [3,4], the Supreme Court of Illinois, in considering a contention of unlaw-

ful delegation of authority, quoted from one of its own former decisions as follows: "'The constitutional doctrine of separation of powers was not intended to confine the Legislature to the alternatives of complete inaction or the imposition of rigidly inflexible laws which would distort rather than promote its objective. When it is necessary, the legislature may commit to others the responsibility for the accomplishment of the details of its expressed purpose. The scope of permissible delegation must be measured in terms of the complexity and diversity of the conditions which will be encountered in the enforcement of the statute. So it has been said almost from the outset that the legislature may authorize others to do things which it might properly, but cannot understandingly or advantageously do itself.'" (See also *Upham v. Supervisors of Sutter County* (1857) 8 Cal.378, 383-384.)

It appears to us likewise that the scope of permissible delegation of power to the agency should "be measured in terms of the complexity and diversity of the conditions which will be encountered" in the performance of the final plan.

The Legislature can be assumed to have recognized that a final plan must be enacted before the agency can commence acquisition of land and that thereafter the land must be resold to redevelopers for actual construction so that some appreciable interval of time must elapse between the evolution and formulation of the final plan by the agency, its adoption by the legislative body and its ultimate fulfillment by redevelopers. Obviously, some flexibility in the final plan so far as it relates to section 33707 is essential to avoid

the necessity of constantly seeking amendment by the legislative body (see *ante*, fn. 4) each time that some unforeseeable exigency arises. Examples of such exigencies already existing in the particular project area are depicted in the record and noted by the trial court. During the planning stages it appeared that the land owned by Greater Los Angeles Plans near Fifth and Flower Streets might be developed as a music center. Apparently this will not occur. The three blocks bounded by First, Hope, Second and Hill Streets are presently owned by the County of Los Angeles and it appears that it had been contemplated to erect multi-story parking on at least part of that area and that tunnels across First Street and columns in the middle of Grand Avenue were constructed in contemplation of such development. Thereafter it developed that the county seemingly intends to abandon the construction of such parking facilities.

It cannot be seriously argued that a final plan must be a compliation of blueprints or working drawings, representing final engineering studies, primarily because the agency is not the one who does the building. The final plan is not required to be precise from an engineering standpoint but only as reasonably precise and detailed from a planning standpoint as may be expected in light of "the complexity and diversity of the conditions which will be encountered."

Manifestly section 33707 is but one of numerous sections set up as directives to guide the agency in formulating the plan, all to the end of achieving the legislative objective. As an ultimate standard for testing the sufficiency of an agency-proposed plan, section 33731 (compare present § 33367) provides that "On

the question of the adoption of any redevelopment plan, the legislative body shall determine

"(a) Whether the plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare.

"(b) Whether the adoption and carrying out of the redevelopment plan is economically sound and feasible." (Stats. 1951, ch. 710 § 1, p. 1938.) Each plan must come within the statutory standards and its adequacy necessarily must be gauged by relating its overall content to the particular project area and objectives, all in the light of the community, size, character and needs. In *Holloway v. Purcell* (1950) 35 Cal.2d 220 [217 P.2d 665] statute authorized the Highway Commission to exercise its authority "on such terms and conditions as in its opinion will best subserve the public interest." (P. 231 [12].) This court held that such requirement provided an adequate standard to guide the commission. (See also *City & County of San Francisco v. Superior Court* (1959) 53 Cal.2d 236, 250 [10] [1 Cal.Rptr. 158, 347 P.2d 294].) Section 33707 does not require that in a redevelopment plan there shall be any minimum percentage of open space or that there shall be any limitations on the type, size, height, number or proposed uses of buildings or that there shall be dwelling units at all or any particular number or kind of dwelling units per unit of area, or that any of the project area must be devoted to public purposes. What section 33707 appears to say is that if the plan embraces any of the matters included in this section, they shall be shown in the plan. (See also § 33742.)

The contention that the "amount of open spaces" cannot be ascertained is answered by reference to the map on page 3 of the final plan; to section H2d of the plan and to section H5 relating to land coverage. The "street layout" is likewise shown on the map, page 3. (And see Health & Saf. Code, § 33735.) Limitations on the type, size, height, number and proposed use of buildings are ascertainable by reference to the map, page 3, and to section H2a-g and section H3a-f. The number of dwelling units "is tentatively 3100 with an additional 460 dwelling units" in case of alternative use of one block.

Much stress is laid on the use of the word "tentative" in relation to various items of planning such as the street rights of way and easements, the proposed utilities, the proposed water system, the electric power and street lighting system, the gas and telephone systems, and the proposed grading. The use of the word "tentative" throughout the plan is in connection with and related to the schematic plans contained in the final plan, which schematic plans are of such a scale that it would be impossible to use such plans or maps for construction purposes. As concluded by the trial court, it would reasonably appear that what is meant is that the attached schematic plans show the approximate location, size, etc., of the various items referred to as "tentative."

The inclusion of certain "alternative use" provisions in the final plan is attacked as rendering it uncertain and constituting an unlawful delegation of power to the agency. The inclusion of alternative uses does not give the agency *carte blanche* to determine the uses for

which these areas are to be developed. Each alternative is specific and definite. Any discretion vested in the agency is limited to accepting the proposals of redevelopers to develop the area pursuant to one of the alternatives which would best serve the public interest and carry out the Community Redevelopment Law and as such is a valid delegation of authority.

Contention is further made that the plan provision section H8b reserving to the agency the right of approval of architectural plans is an unlawful reservation of power. Section 33272 provided that an agency may obligate a purchaser to comply with conditions which the agency deems necessary to carry out the purposes of the redevelopment. Assurance of "harmonious architectural congruity" seems not only to be a reasonable condition in a redevelopment project but a failure to reserve authority in this field conceivably could be subject to adverse criticism.

Finally, as to compliance with section 33707, it is contended that the agency has reserved to itself "the uncontrolled power and right to invalidate any reconveyance, lease or resubdivision in the Project Area for a period of thirty years" and thereby imposed an unlawful restraint on alienation. But what the final plan actually declares (§ H8e2) is that all contracts committing the agency to convey land shall provide that "reconveyances, leases and resubdivisions shall require the prior written consent of the Agency." Section 33741 required that the final plan contain adequate safeguards to insure that the redevelopment be carried out as planned and section 33709 specified that any lease or sale of land shall be conditioned on the

redevelopment and use of the property in conformity with the plan. It does not appear that the plan provisions go beyond the law or constitute an unlawful reservation of power.

7. OWNER PARTICIPATION AS PROVIDED BY FINAL PLAN

At the time of adoption of the tentative plan by the council in November 1956, section 33701 specified that "Every redevelopment plan shall provide for participation in the redevelopment of property in the project area by the owners of all or part of such property if the owners agree to participate in the redevelopment in conformity with the redevelopment plan adopted by the legislative body for the area. This section does not prohibit the owners from submitting an alternative plan pursuant to this part."

Thereafter, effective in September 1957, the following paragraph was added to section 33701 (Stats. 1957, ch. 1696): "With respect to each redevelopment project, each agency shall, within a reasonable time after the adoption of the tentative plan and before the adoption of the final plan, adopt and make available for public inspection rules to implement the operation of this section in connection with the plan."[5] (See present §§ 33339; 33345; 33380.)

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[5]Other provisions relating to owner participation, as they read at the times here involved, are:

§ 33702: "Every redevelopment plan which contemplates property owner participation in the redevelopment shall contain alternative provisions for redevelopment of the property if the owners fail to participate in the redevelopment as agreed."

§ 33745: "If the redevelopment plan adopted provides for participation in the redevelopment of property in the area by the owners of such property, and if for 30 days after the

As already related herein, on May 7, 1958, the agency adopted and made available for public inspection rules implementing the provisions for owner participation as provided in the final plan; on the same day the agency formulated and adopted a final redevelopment plan, which it thereafter submitted to the planning commission for report and recommendation; and subsequently this plan was presented to the council.

Pertinent provisions respecting owner participation which are contained in the final plan and in owner-participation rules adopted by the agency are set forth in the footnote.[6]

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adoption of the plan, the owners fail or refuse to enter into a binding agreement for participation in accordance with the plan, the alternative provisions provided for in section 33702 became effective as the official redevelopment plan of the project area. The legislative body may extend the 30-day period by not more than 60 days."

§ 33746: "After the adoption of the redevelopment plan and the expiration of the period provided for in section 33745, further proceedings which affect the specific area in which the owners refused to participate with reference to redevelopment of the project area shall be stayed for 30 days. . . ."

See also section 33275.

[6]Final Plan provisions:

"C7. *Owner-Participation*

"Pursuant to and subject to sections 33275, 33701, 33702 and 33745 of the Law, and also subject to provisions of Section D herein, owners of real property within the Project may retain ownership thereof upon execution of agreements with the Agency to participate in the redevelopment in conformity with the Plan.

". . .

"D4. *Obligations of Owner-Participants*

"Owners of real property in the Project area who choose to participate in the redevelopment in accordance with the Plan and pursuant to the applicable provisions of the Law may be permitted to do so subject to the rules and regulations adopted by the Agency and on file in the Agency's office.

"It is hereby established that, due to the complexity of the sizes and shapes of parcels individually owned prior to acquisition

Objectors attack the owner-participation provisions of the final plan and the owner-participation rules with various contentions that the statutory requirements as to permitting owner-participation have not been met, or that the rules and plan provisions are unfair and invalid.

Certain of the contentions in this regard may be summarized as follows: The final plan does not comply with section 33701 of the Health and Safety Code because that section requires that redevelopment plans contain provisions allowing owner participation by any

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by the Agency and in order to assure logical development, participation by owners of real property in the Project area shall be limited to not less than a planned unit of development as determined by the Agency and subject to the controls set forth in Section H hereof for any single owner-participant. For the purpose of clarification, a single owner-participant may be either an individual or a group of individuals bound together by contract so as to be classed as a single entity by law.

"a *Acceptable Types of Owner-Participants*

"(1) Individuals, groups of individuals, corporations or other lawful entities as herein defined, who, prior to adoption or approval of this Plan by the City Council, are owners or real property in the project area and who shall elect to develop or redevelop their properties subject to regulations on file in the Agency's office and who shall prove financial ability to develop or redevelop their properties in accordance with the Plan and who shall assume financial responsibility for their pro rata share of the costs of the necessary site improvements related thereto, including any required demolition of structures, installation of utilities, grading, street changes and street improvements.

"(2) Owners, prior to adoption or approval of this Plan by the City Council, of improved real property in the Project area, whose improvements, as determined by the Agency, may be permitted to remain and who shall elect to participate in the redevelopment by the alteration of said improvements, subject to the rules and regulations on file in the Agency's office, and who shall prove financial ability to complete said alterations within a reasonable time as fixed by the Agency and who shall assume financial responsibility for their pro rata share of the costs of the necessary site improvements, including the installation of required utilities, grading, street changes and street improvements.

and all owners of property within the project area who desire to do so, and agree to redevelop their property in conformity with such plan. The final plan herein requires that prospective owner-participants qualify as being financially responsible and able to perform their owner-participation agreement with the agency. The plan further sets forth proposed uses for certain areas of the project which require the assembly of large plots of land. The requirement that the prospective owner-participant be financially responsible, when com-

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"b *Failure of Owner to Participate as Agreed*

"In the event of default or breach of an owner-participation agreement or any of the terms and conditions of any such agreement by a participating owner whose eligibility to participate is established as herein set forth, the Agency shall acquire the property of said owner and shall dispose of said property in accordance with the Plan and the Law.

"The amount to be paid said owner in the event of purchase after such default or breach shall be the fair value of the property as of the date of execution of the agreement or, in the event of acquisition by condemnation, the amount fixed by Court or Jury.

"If for thirty (30) days after adoption of the Plan by the City Council, an owner fails or refuses to enter into Plan, the alternative provisions set forth above become effective, unless extensions of time as provided for in the Law are granted for not to exceed sixty (60) days.

"c *Area Available to Former Owners for Development*

"Subject to the rules and regulations on file in the Agency's office governing the repurchase of properties by former owners of properties elsewhere in the Project area, the area bounded by Second, Hill, Fourth and Olive Streets will be available to said former owners of properties for development in accordance with the Plan.

"

"H 8d. *Owner-Participation*

"Owner participants shall conform to the requirements of the Plan."

The owner-participation rules adopted on May 7, 1958, by the agency pursuant to section 33701 (Agency Exhibit 31), read in part as follows:

"A. GENERAL REGULATIONS

"

"3. An owner must agree to be governed in the redevelopment of the property subject to the 'owner-participant agreement' by

bined with the planning proposals requiring assembly of large plots of land, makes it impossible for many small property owners to participate. Therefore, it is argued, the final plan violates section 33701.

That there is no absolute right of owner participation in the redevelopment of each separately owned parcel of land within the project area is apparent from the provisions of section 33701 itself in that it provides that as a condition thereof an owner desiring to participate must agree "to participate in the redevelop-

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all the requirements, regulations and controls set forth in the Redevelopment Plan (Subdivision H.)

"4. An owner must submit proof of his qualifications, including financial responsibility, to carry out the terms and provisions of the 'owner-participant agreement'.

". . .

"B. SPECIAL REGULATIONS

". . .

"1.b. An Owner must agree to repair, rehabilitate, improve, modernize, alter or reconstruct the existing building so as to make the same compatible with the type of redevelopment proposed for the Project Area and in accordance with the land uses permitted by the Redevelopment Plan; and all in accordance with Plans submitted by the owner and approved by the Agency.

"c. An owner must agree to reimburse the Agency for that proportionate share of the cost of site improvements properly allocable to his property.

"2. *Properties on Which Existing Buildings Will Be Removed by Owner.*

"a. An owner must already own property, or must agree to acquire such additional land as may be necessary from the Agency, which will provide an appropriate building site for the erection of a structure in accordance with the Redevelopment Plan; provided, however, that any building site proposed to exist or to be established shall not be subject to owner-participation if it interferes with the plan for a larger unit of development.

"b. Under these circumstances, the Agency will agree to sell the owner such additional land at its fair market value as determined by the Agency, and pursuant to a negotiated sale as provided in Sections 33267 and 33268 of the Community Redevelopment Law.

"c. An owner must agree to reimburse the Agency for that proportionate share of the cost of site improvements properly allocable to his property."

ment in conformity with the redevelopment plan adopted by the legislative body for the area." "Redevelopment," as defined by section 33013 (se present § 33020), includes provision for "such residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare." Patently, the Community Redevelopment Law does not contemplate that every redevelopment of each separate parcel within the financial ability of the present owner. In *Fellom v. Redevelopment Agency* (1958) 157 Cal. App.2d 243, the court commented at page 250 [4] [320 P.2d 884]: "We have no doubt that the Legislature, in enacting the Community Redevelopment Law, hoped that redevelopment would be possible in areas such as the Diamond Heights Area with the participation and cooperation of the owners of the property within the 'blighted' area, but it is also apparent from a reading of all the sections and the entire law that there is provision for a method of redevelopment without participation by the owners of the land. For instance, the express power of eminent domain would negate the necessity of participation by the owners, if the agency in its exercise of its constitutional powers acts fairly and without discrimination. Even the language of section 33701, 'Every redevelopment plan shall provide for participation in the redevelopment of property in the project area by the owners of all or part of such property . . .,' contemplates that participation be not extended to all owners of the property. This, of course, imposes upon the agency a duty of reasonableness and good faith, if they wish to make participation available to part of the owners of the property embraced in the redevelopment project."

Because the final plan necessitates assembly of large plots to carry out the proposed uses in certain areas of the project and requires prospective owner-participants to qualify as financially responsible, and thus in some cases renders it impossible for small property owners, as such, to separately participate with the same status, does not in and of itself establish a violation of section 33701.

The question with respect to the owner-participation provisions would appear to be, as stated in the *Fellom* case, whether the agency has fulfilled its obligation of "reasonableness and good faith." The imposition of reasonable terms and conditions upon the right to participate as the agency may deem necessary or appropriate in light of the redevelopment proposed would seem to be not only within the power but a duty of the agency and this would include such rules as would reasonably assure fulfillment of an owner-participation agreement including such matters as the establishment of financial ability. The plan restrictions as to land coverage apply equally to redevelopers as well as to owner-participants and does not appear to be anything unfair or discriminatory in requiring that an owner-participate, shall subject himself to the same restrictions that are required of an outside developer and which are reasonably or in bad faith in adopting the owner-participation provisions of the final plan.

So far as concerns delegation of authority to the agency to require that prospective owner-participants demonstrate their financial ability, it appears that such authority is implicit in section 33701 requiring the agency to adopt rules to implement "the operation of this section in connection with the plan" which here

requires, as set forth in section 33701, that owner participation be contingent upon the owner's agreeing "to participate in the redevelopment in conformity with the redevelopment plan." Requiring proof of ability to perform by an owner-participant is contemplated by the requirement of section 33741 that "No plan shall be approved unless it contains adequate safeguards that the work of redevelopment will be carried out pursuant to the plan. . . ." We perceive no substantial difference between the authority to require demonstration of financial ability of an owner-participant and the authority granted to the agency in section 33272 to require purchasers to "Begin the redevelopment . . . within a period of time which the agency fixes as reasonable" and to "Comply with other conditions which the agency deems necessary to carry out the purposes of this part." Here the Legislature has specifically authorized the agency to adopt rules "to implement the operation" of owner participation in connection with the final plan. [27] As expressed in *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 549 [1] [159 P.2d 921], "To narrowly proscribe the rule-making power of the [agency] would be to overlook one of the fundamental purposes of the policy of delegation of powers and to deprive the Legislature and the people of the state of one of the major benefits thereof. The essentials of the legislative function are the determination and formulation of the legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or ad-

ministrative officers the 'power to fill up the details' by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect, and provision by the Legislature that such rules and regulations shall have the force, effect, and sanction of law does not violate the constitutional inhibition against delegating the legislative function."

Certainly an agency rule requiring demonstration of financial ability of an owner-participant can be said "to promote the purposes of the legislation and to carry it into effect."

What has just been said applies with equal effect to the suggestion that participation by each owner should be settled prior to adoption of the redevelopment plan by the agency, and that to such end the size and location of all building sites be rigidly established by the agency prior to negotiations with prospective owner-participants. No such requirement appears in the statute. Further, as pointed out by the agency, the flexibility provided by the plan as finally adopted by the council would seem to permit of at least as great an opportunity of participation by owners as if the plan had been so rigid that varying proposals by owners, however meritorious, could not be adapted within the framework of the overall final plan.

With respect to the time of adoption of owner-participation rules, it has already been pointed out that the language of section 33701 directing that such rules are to be adopted and made available for public inspection "a reasonable time before the adoption of the final plan" was added some four months *after* adoption of the tentative plan by the council. Although the agency

thereafter adopted and made public its owner-participation rules on the same day that it formulated and adopted a final redevelopment plan, this was still two weeks prior to submission of the final plan to the council over six weeks before the opening by the council of public hearings on the final plan, and almost ten months in advance of adoption of the final plan by the council.[7] Under the circumstances no prejudice to objectors is established.

The further suggestion that at the time of adoption of the tentative plan statements made by the agency and by agency members indicated that the final plan would provide for owner participation more exactly and in more detail than it does, finds no substantial support in the record. Such statements were to the general effect that the matter was under consideration and would be dealt with further at the final plan stage, and that in cases where as to any parcel the agency determined it to be feasible and possible in accordance with the final plan the agency would endeavor to make participation agreements with owners. Thus there is no merit in the contention that the final plan is in this respect not based on the tentative plan, and so violates the requirement of section 33703 that "A redevelopment plan . . . shall be based upon the approved tentative plan. . . ."

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[7]It may be noted that some two and one-half months *after* adoption of the final plan by the council the Legislature again amended section 33701, effective "immediately" (June 1959), to require that the owner-participation rules be adopted and made public by the agency a reasonable time before "*its* adoption" (italics added) of the final plan. (Stats. 1959, ch. 1102.) However, neither the agency nor the council had the guidance at the times here involved, of this further amendment, and their interpretation of the earlier language to mean before the *council's* adoption of the final plan would not reasonably appear subject to

The complaint of unconstitutional discrimination by objector Goldman in that the final plan requires a participating owner to assume financial responsibility for his pro rata share of the costs of necessary site improvements (see paragraph D 4 of fn. 6, *ante*), whereas redevelopers are exempted from a similar financial responsibility, likewise is without merit. We are cited to no provision in the final plan which would extend such an exemption. On the contrary, it appears that in selling the land to either outside redevelopers or to owners who wish to participate with respect to nonowned land (i.e., to buy additional land), the agency is required to sell at fair market value for the use to which the land is to be put under the final plan. (See present §§ 33430-33433, 33441; and former § 33267, subd. (d), and § 33709.) Fair market value would, of course, include the value of the necessary site improvements for which a participating owner who retains ownership of his own land is required to pay his pro rata share. Thus no unfair discrimination is shown. (See *Randolph* v. *Wilmington Housing Authority* (Del. 1958) 139 A.2d 476, 486 [9-10].)

8. ECONOMIC FEASIBILITY OF FINAL PLAN

The trial court found and concluded that substantial evidence and the relevant law support the finding and determination of the council that the final plan is economically sound and feasible. (§ 33731.)[8] The only challenge to this determination is made by Objector

[8]Section 33731: "On the question of the adoption of any [final] redevelopment plan, the legislative body shall determine: . . . (b) Whether the adoption and carrying out of the redevelopment plan is economically sound and feasible."

Trautwein, who appears to complain because the plan provides that oil and mineral rights below a depth of 500 feet shall not be taken from the present owners of the land when it is purchased or sought through eminent domain proceedings, but that the plan fails to provide for a drill site whereby the owners may recover any oil that might be found below the surface of their property. The net effect, says objector, is that the owners will be deprived of their mineral rights, for which the plan contains no payment provision, thereby rendering the project economically unfeasible, and unlawful. In the absence of evidence establishing with some degree of reliability or certainty the existence of commercial oil deposits under the project area, this contention is without substance. No such evidence is cited or, seemingly, was offered, although reference is made to certain testimony on the general subject of the possibility of valuable deposits. Objector's position on this point has no merit. The current value and reasonably potential uses, not mere speculative possibilities, are here relevant. It may also be noted that the trial court appears correct in its comment that whether or not a taking to a depth of 500 feet would or would not be for all practical purposes a taking of any underlying valuable mineral rights is not properly at issue in this proceeding but will arise when, if and as the agency exercises the power of eminent domain. (See *Pacific Gas & Elec. Co.* v. *Hufford* (1957) 49 Cal.2d 545, 552-553 [1] [319 P.2d 1033].)

9. FAIRNESS OF HEARING BEFORE CITY COUNCIL

Objectors contend that for various reasons they were denied a full and fair hearing before the city council. Section 43730 provides that at the public hearing on the final plan the council "shall consider . . . all evidence and testimony for or against the adoption" of the plan.

A. Economic Feasibility Reports.

Objectors first complain of interpretations placed by the agency or by agency members or witnesses on three "economic feasibility" reports or "land use surveys" (termed the Babcock report, the Stanford Research report, and the Hoyt report) made on behalf of the agency. It is conceded, however, that all three reports were placed before the city council, and it appears that objectors themselves called to the attention of the council the asserted negative aspects of the reports. Objectors' suggestion that the agency in order to insure a fair hearing should present objectors' position as well as its own with respect to these reports is untenable. Further, no concealment or misrepresentation by the agency is shown.

B. Appraisals.

Objector Trautwein declares in his brief that "The record is replete with the efforts of the opponents to obtain information of the two appraisals made for" the agency, and refers us to some 72 pages of the record, but does not otherwise identify or describe such appraisals except to again refer to them as "real estate appraisal reports" one of which "had cost $84,-

000," an amount stated to be beyond the means of the individual property owners to expend "to show that the Agency's plan was not economically feasible." Citing three discovery cases *(Suezaki v. Superior Court* (1962) 58 Cal.2d 166 [23 Cal.Rptr. 368, 373 P.2d 432]; *Oceanside Union School Dist.* v. *Superior Court* (1962) 58 Cal.2d 180 [23 Cal.Rptr. 375, 373 P.2d 439] and *San Diego Professional Assn.* v. *Superior Court* (1962) 58 Cal.2d 194 [23 Cal.Rptr. 384, 373 P.2d 448]), this objector declares "it is clear that this information should have been made available to these appellants [objectors] both in the hearing before the City Council and in the hearing before the Superior Court.

It is not suggested, however, that objectors made any effort to secure the information by means of discovery procedures. Additionally, it appears that at the public hearing before the city council the assistant city attorney informed the council that if it wished to know "the total appraisal figure" it could require disclosure of that information, but that the council chose not to do so. Further, since as already discussed the issue before the trial court was whether or not there was a reasonable basis for the council's finding of economic feasibility, evidence as to appraisals which the council did not have before it would not appear relevant. Objectors, although their contentions are often expressed with considerable lack of precision, do not appear to claim that the finding of economic feasibility is without support in the record. In short, no error is shown on this issue.

C. Insurance Company Office Space

Objector Briggs complains that the Hoyt economic or land use report "justified the demand for institutional office space in the Project Area on the basis that a major insurance company had indicated a demand for a million square feet of office space in the" area, but that "Before the City Council, the Agency refused to divulge the name of the company." This situation was disclosed to the trial court, before whom Mr. Sesnon, chairman of the agency, also testified that the company was Occidental Life Insurance Company and that at the time of the hearings before the council the witness knew that agency member Clarke was a member of the board of directors of Occidental and also its past president; further, Mr. Sesnon stated that the company had requested that its name be kept confidential. Objector Briggs asserts that "we should have been permitted to inquire [at the council hearings] into all facets of the negotiations concerning the potential acquisition of land by Occidental." It appears, however, that there were no such negotiations. Mr. Sesnon testified that none had been entered into, and, further, that the fact that Occidental wanted to build in the project area had nothing to do with the agency's decision to reject the alternative plan filed by Briggs, which would have excluded its property from the project. Although objector now suggests that perhaps there might have existed in some fashion a conflict of interest flowing from Mr. Clarke's connection with both the agency and Occidental, its particular complaint appears to be that the agency should not have submitted to the council a redevelopment plan which would include in the project area Briggs' south

of Fourth Street property, but, rather, should have expressed no opinion on this property and permitted the "Council to make up its own mind." The statute, however, places upon the agency the duty to formulate and submit to the council "a redevelopment plan for each project area" (§ 33700 et seq.) and no unfairness to objectors is shown in the respect here involved.

D. Mr. Sesnon's Membership in GLAPI.

As related by objector Briggs, Mr. Sesnon, agency chairman, for many years had been a member of Greater Los Angeles Plans, Inc., a nonprofit corporation (herein called GLAPI), and there is some evidence that he was a director thereof at the time of the hearings before the council. GLAPI owns some 14 parcels of property within the project area, and is said by objector to be "one of the five major landowners in that portion of the Project Area located south of Fourth Street" (i.e., the portion which Briggs sought to have excluded). GLAPI's articles of incorporation and its bylaws were submitted to the city council at the time of the public hearings, and Mr. Sesnon's relationship to GLAPI was also inquired into in great detail at those hearings. Although objector does not suggest any concealment of facts in this connection, it is urged that Mr. Sesnon "could not properly act as a member of the Agency on all matters relating to the adoption of the Final Plan when he was at the same time directly affiliated with the largest property owner in the Project Area," and speculation follows concerning "the possible conflicting interests that could have motivated Mr. Sesnon when he

voted against the adoption of the Briggs alternative plan eliminating the area south of Fourth Street."

The law concerning possible conflicts of interest is, however, found in the statute and need not be the subject of speculation. (§§ 33236, 33237.)[9] It is not shown, or even suggested, that Mr. Sesnon had acquired any interest in any of the property within the project area or had failed to made a full disclosure of his interest in and connection with GLAPI, or that the agency proposed to acquire any property or interest therein in violation of the applicable code sections. Objector's contention that he was nevertheless in some way deprived of a fair hearing is without merit. *Griggs* v. *Borough of Princeton,* (1960) 33 N.J. 207 [162 A.2d 862], involved other facts and other law, and lends no support to the position of objector.

Other suggestions made in passing, that perhaps objectors did not receive a fair hearing before the city council are so unsubstantiated as not to merit discussion.

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[9]Section 33236: "No agency or community officer or employee who in the course of his duties is required to participate in the formulation of or to approve plans or policies for the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in such property, he shall immediately make a written disclosure of it to the agency and the legislative body which shall be entered on their minutes. Failure to so disclose constitutes misconduct in office."

Section 33237: "An agency shall not acquire from any of its members or officers any property or interest in property except through eminent domain proceedings."

10. JURY TRIAL

In reliance upon various of the above stated contentions attacking the validity of the subject redevelopment plan, objector Babcock included in the complaint filed in his action claims for damages allegedly resulting from the "purported adoption of the Ordinance approving the final plan," and now contends that he was entitled to a jury trial on such damage claims. This contention is disposed of by our holding that the plan is valid.

11. COSTS

Objector Babcock, declaring that "the question of public use is foreclosed by judgment on a petition under the Confirmation Act" (§ 33957,[10] formerly 33961), further urges that the trial court erred in granting judgment for costs against Babcock in the agency's proceeding. *San Joaquin etc. Irr. Co.* v. *Stevinson* (1913) 165 Cal. 540 [132 P. 1021], relied upon by objector, was an eminent domain proceeding in which the trial court granted defendant property owner's motion for nonsuit and gave judgment accordingly. Although on appeal the judgment was reversed, it was held (p. 542) that appeal costs could not constitutionally be awarded against the losing landowner. (See also *City of Stockton* v. *Vote* (1926) 76 Cal.App. 369, 408 [21] [244 P. 609] in which appeal costs were charged to plaintiff city although it secured a reversal with respect to the damages award.)

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[10]Section 33957: ". . . said judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which said judgment is binding and conclusive."

Section 1255 of the Code of Civil Procedure, enacted in 1872, states that in eminent domain actions "Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court." However, in *San Diego Land etc. Co.* v. *Neale* (1891) 88 Cal. 50 [25 P. 977, 11 L.R.A. 604], an eminent domain proceeding, it was held (p. 68) that "whatever may be the constitutional rights of the parties . . . it will be a proper exercise of discretion" to require the condemner to pay the costs of trial and of an unsuccessful appeal by the owner from an order granting the condemner a new trial with respect to damages, and the trial court was directed to tax the costs accordingly.

In *City & County of San Francisco* v. *Collins* (1893) 98 Cal. 259 [33 P. 56], the trial court, after judgment had gone in favor of the condemner, disallowed a part of the owners' trial costs. On appeal it was held (pp. 262-263) that the court's discretion to allow and to apportion costs is limited by the owners' constitutional right to full compensation for their property, and that the owners were entitled to recover their trial costs in full from the condemnor subject to the court's power to determine what cost items were proper or improper (i.e., necessary or unnecessary). The trial court's order was reversed with directions to allow the disputed costs.

The owner's constitutional right to be free from costs in an action to take his property for a public use was again declared in *Collier* v. *Merced Irr. Dist.* (1931) 213 Cal. 544 [3 P.2d 790], in which plaintiff riparian owner sued defendant irrigation district for

damages allegedly suffered by reason of invasion of plaintiff's rights in a certain stream, and for an injunction against further encroachment thereon. Defendant answered contending that a public use had intervened, but offered to pay plaintiff damages if the court found it had invaded plaintiff's rights in the stream. The court held for defendant on the issue of public use, and the jury's verdict was for defendant with respect to damages. The court then denied plaintiff his trial costs. On appeal, though plaintiff again lost on the issues of public use and of damages, it was held (p. 572 [12]) that "The cause having been converted practically into a condemnation proceeding and appellant having been paid in 'benefits' [to his land, rather than in monetary damages], the constitutional provision . . . seems to be sufficient to vouchsafe the award to him free from the costs of respondent and with his own costs as well." And in *Smith* v. *Pacific Gas & Elec. Co.* (1933) 132 Cal.App. 681 [23 P.2d 444], in which plaintiff owners sued the utility company after it erected poles across their land and strung wire thereon without plaintiffs' permission, and defendant filed a cross-complaint seeking to condemn a right of way across the land, the court allowed the condemnation but awarded plaintiffs damages plus trial costs. On plaintiffs' unsuccessful appeal it was declared (p. 683 [3]), "Being an action in the nature of eminent domain, the appellants [owners] are entitled to their costs on appeal."

In *Peabody* v. *City of Vallejo* (1935) 2 Cal.2d 351 [40 P.2d 486], defendant appealed from a judgment permanently enjoining it from storing any of the waters of a certain stream. Although on appeal the

judgment was reversed and the cause remanded for a new trial, by reason of failure of the trial court to apply the correct legal principles, it was held (p. 380 [25]) that under the ruling of *Collier* v. *Merced Irr. Dist., supra,* plaintiff reparian owners were entitled to their costs taxed by the trial court "from the inception of the present action" as well as (p. 384) their costs on appeal. And in *Heimann* v. *City of Los Angeles* (1947) 30 Cal.2d 746 [185 P.2d 597], an inverse condemnation action in which plaintiffs prevailed but were denied costs in the trial court (p. 752) "on the ground that the judgment was such as could have been rendered by the municipal court," it was held on appeal (pp. 752-753 [1-3]) that plaintiffs had a constitutional right to recover costs, as otherwise they would be "deprived of the full measure of compensation to which" they were entitled.

On the other hand, in *Oakland* v. *Pacific Coast Lumber etc. Co.* (1916) 172 Cal. 332 [156 P. 468, Ann.Cas. 1917E 259], in which the owner unsuccessfully appealed because dissatisfied with the damages award, the court, although (p. 334) reaffirming the view expressed in *San Joaquin etc. Irr. Co.* v. *Stevinson* (1913) *supra,* 165 Cal. 540, 542, that on a successful appeal by the *condemner* in which the judgment in favor of the owner is reversed the constitution precludes recovery by the condemner of its appeal costs, declared (pp. 335-337) that where the owner loses on his *own* appeal, as distinguished from an appeal by the condemner, there is no constitutional inhibition against awarding appeal costs against him, as he was under no compulsion to appeal. And in *Yolo Water etc. Co. v. Edmands* (1922) 188 Cal. 344 [205

P. 445] in which plaintiff condemner upon objection by the owner was denied leave to amend its complaint to withdraw a portion of the land, and thereafter appealed successfully from the judgment for damages, costs on appeal were awarded against the owner with the comment (p. 347 [1]) that "The fault for that appeal lies wholly with the defendant, who causelessly insisted upon the plaintiff continuing the prosecution of the action which he desired to dismiss. No principle of justice and no constitutional provision require that the defendant be exempted from the costs caused by him in a proceeding because of an objection of that character." (See also *Los Angeles P. & G. Ry. Co.* v. *Rumpp* (1894) 104 Cal. 20, 23-24 [37 P. 859], in which an award of costs in a second trial was upheld against the owner, who had successfully appealed after the first trial but secured an even lower award the second time.)

Where neither pleadings nor evidence in an action involve a claim to a right to take private property for public use, it is held that eminent domain principles do not apply and that appeal costs are properly levied against plaintiff owners who had prevailed in the trial court but lost on defendant's appeal. *Crum* v. *Mt. Shasta Power Corp.* (1932) 124 Cal.App. 90, 95 [2] [12 P.2d 134].)

It is settled that clearance of blighted areas and redevelopment thereof are public uses. *(Redevelopment Agency* v. *Hayes* (1954) *supra,* 122 Cal.App.2d 777, 802-804 [12,13].). Public use is, however, one of the issues which owners reluctant to give up their property may justifiably raise in eminent domain proceedings

as well as in actions in inverse condemnation or "in the nature of eminent domain." Even though they may not prevail on this issue in either trial court or on appeal, it appears from the most recent expressions of the court that they are entitled to be free from costs in litigating it. (*Collier v. Merced Irr. Dist.* (1931) *supra*, 213 Cal. 554, 572 [12]; *Peabody v. City of Vallejo* (1935) *supra*, 2 Cal.2d 351, 380 [25].) In defending against the subject agency proceeding objectors challenged the council's finding of blight, upon which the factor of public use turns. Inasmuch as the agency has prevailed in this proceeding, then, if and when it seeks to condemn objectors' property, the matter of public use will have been removed from the issues. Under such circumstances we are persuaded that as to this aspect of the case the proceedings should logically be considered in the nature of eminent domain, with no costs to be assessed against the property owners.

12. GOLDMAN ACTION

The Goldmans attack the subject redevelopment project on a variety of grounds. Those meriting discussion appear to be the following:

A. Consent of Other Taxing Agencies.

It is contended that the final plan provides for "an illegal appropriation by the City Council of funds belonging to other taxing agencies, in that they provide for such tax allocation without first requiring the City Council to obtain consent to such allocation from such other taxing agencies." From this opening contention it is argued that the Community Redevelopment Law is unconstitutionally uncertain in failing to pro-

vide whether consent of other taxing agencies must first be obtained and as constituting an unlawful delegation of general and specific legislative powers to the local legislative body approving plan.

California Constitution, article XIII, section 19, (added November 4, 1952), provides in part as follows: "The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon such taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county district, or other public corporation (hereinafter sometimes called 'taxing agencies') after the effective date of the ordinance approving the redevelopment plan shall be divided as follows: . . ."

Sections 33950 through 33954 (now §§ 33670-33673), added by Statutes of 1951, became effective upon the adoption of the foregoing constitutional amendment and provide that any redevelopment plan may contain a provision for the division of taxes as therein set forth. The provisions of the tax allocation sections follow the constitutional provisions.

Admittedly, the tax allocation sections of the Community Redevelopment Law (§ 33950 et seq.) do not require the legislative body to obtain the consent of other taxing agencies who have theretofore or who will thereafter receive part of the taxes levied upon the property within the project area and, admittedly, the final plan here did not require nor was there obtained such a consent from the other taxing agencies such as the County of Los Angeles, the Los Angeles City School District and the Los Angeles County Flood Control District.

While not the subject of decision by a court of review, so far as research discloses, on the question of whether consent of such other taxing agencies is necessary to implement a tax allocation under the law, the California Attorney General has advanced the view that no such consent is required (*27 Ops.Cal.Atty.Gen.* at p. 357): "Nothing in the constitutional provision, [nor] in the applicable sections of the Health and Welfare Code . . . requires any such agreement. Upon approval by the city council of a redevelopment plan containing a provision for division of taxes as authorized by California Constitution article XIII, section 19, and Health and Safety Code sections 33950-33954, such division became fully operative without further formalities."

The contention of the Goldmans in this regard that the tax allocation sections constitute an illegal abdication of legislative responsibility in permitting a municipal legislative body to deprive other taxing agencies of taxes without their consent is not sustainable, for the reason that the city council, although not an agency having statewide jurisdiction, in approving a final plan for redevelopment is not then acting solely under the powers of a municipal legislative body upon a municipal affair but is also entitled to exercise the powers delegated to it when functioning under the state law to fulfill the specifically enunciated state purposes. (*Fellom v. Redevelopment Agency* (1958) *supra*, 157 Cal.App.2d 243, 247-248 [3].) So understood, there has been no usurpation of power by the city council as a municipal legislative body.

The nonchartered taxing agencies here involved, the flood control and school districts, derive their taxing

power from the general law and, subject to constitutional restrictions, the Legislature has absolute power over the organization, dissolution, powers, and liability of such corporations. (*Oakdale Irr. Dist.* v. *County of Calaveras* (1955) 133 Cal.App.2d 127, 134 [3] [283 P.2d 732]; *Petition of Sanitary Board of East Fruitvale Sanitary Dist.* (1910) 158 Cal. 453, 457 [111 P. 368].) Far from there being a constitutional limitation on the Legislature in respect to the tax allocation provisions of sections 33950 et seq., the 1952 constitutional amendment (art. XIII, § 19) declares: "The Legislature may provide that any redevelopment plan may contain a provision" for the allocation of taxes such as are provided by the challenged sections. It is clear that such taxing agencies have no vested right to powers of taxation. (*County of Mariposa* v. *Merced Irr. Dist.* (1948) 32 Cal.2d 467, 474 [4] [196 P.2d 920].)

We are therefore in accord with the opinion of the Attorney General that neither under the constitutional provisions nor the statutory provisions, is the legislative body required to obtain consent or agreement from other taxing agencies in respect to the allocation of taxes as provided in the final plan.

B. Constitutionality of Tax Allocation Provisions as to Chartered City.

The Goldmans argue that the ordinance approving the final plan, which includes tax allocation provisions under section 33950 et seq. is unconstitutional as applied to the City of Los Angeles, a chartered city which has availed itself of the "municipal affairs" provisions of section 8 of article XI of the California

Constitution, in that such a city may allocate or relinquish future tax revenue only by an amendment of its charter and not by adoption of an ordinance approving a redevelopment plan. This argument appears to overlook the constitutional provision quoted hereinabove from section 19 of article XIII (as adopted in 1952) which specifically authorized the legislation pursuant to which the tax allocation was included in the final plan, and is without merit.

That the taxing power of a chartered city may be altered as authorized by the state Constitution admits of no doubt. A city is chartered under article XI, section 8, of the California Constitution which expressly provides, in part, that with the requisite population, a city "may frame a charter for its own government, consistent with and subject to this Constitution." Thus spoke the Constitution when the present city charter of Los Angeles was adopted. That the levy and collection of taxes by a chartered city is a municipal affair is clear, but it is equally clear that the broad power of taxation by a chartered city is limited not only by its own charter but by the California Constitution. (*Ainsworth* v. *Bryant* (1949) 34 Cal.2d 465; 469 [2] [211 P.2d 564]; *City of Glendale* v. *Trondsen* (1957) 48 Cal.2d 93, 98 [1] [308 P.2d 1]; *West Coast Advertising Co.* v. *San Francisco* (1939) 14 Cal.2d 516, 524 [4] [95 P.2d 138].)

Here the constitutional amendment of 1952 (art. XIII, § 19) specifically allowing tax allocation is controlling even though it may infringe upon a preexisting taxing power of a chartered city. It is significant that in point of time, section 19 of article XIII was

passed later than section 8 of article XI allowing chartered cities to reserve to themselves control of all their "municipal affairs." Being special in nature and adopted later, the constitutional provision allowing a tax allocation of the municipal taxes of a chartered city and to that extent removing the collection of taxes from the realm of a municipal affair to that of a matter of general statewide concern must be held to control in the limited field that it covers. (See *Ainsworth* v. *Bryant* (1949) *supra*, 471-472 [4].)

The Goldmans make the further contention that the constitutional amendment (art. XIII, § 19) was permissive only (i.e., it could be accepted or rejected by municipalities) and that as to chartered cities it requires a charter amendment to become effective. No support for that contention appears in the amendment itself for it expressly declares "The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied . . . by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation . . . shall be divided as follows: . . ."

It is immaterial whether the amendment is self-executing because it becomes "operative just as soon as it is supplemented by so much legislation as is absolutely necessary to supply its deficiencies." (*Denninger* v. *Recorder's Court* (1904) 145 Cal. 629, 635 [79 P. 360].)

We conclude that the ordinance adopted by the council involving an allocation of tax revenue to become due to a chartered city was not an unlawful amendment to the city charter but was a valid exercise of

power delegated to the council to act in a limited area as a state agency in providing for the allocation of taxes pursuant to the above mentioned constitutional amendment and statutory provisions.

C. Use of Federal Funds.

The Goldmans next appear to argue that federal funds may not be made available to aid in the financing of the project because the approval of the final plan for federal financial assistance (given prior to adoption of the plan by the city council) violates certain requirements which the Goldmans assert are made by the Housing Act of 1949, as amended. (42 U.S.C.A. § 1441 et seq., espec. § 1460 (c).) However, contrary to contentions of the Goldmans, it appears that they have no standing to maintain a suit to enjoin the expenditure of federal funds by the agency. In *Kaskel* v. *Impellitteri* (1935) 204 Misc. 346 [121 N.Y.S.2d 848], affd. 306 N.Y. 73 [115 N.E.2d 659], the court declared at page 854 [3] [121 N.Y.S.2d]: "Plaintiff contends, next, that the redevelopment plan violates the provisions of the National Housing Act of 1949 which, it is submitted, is intended for the protection of the taxpayers and residents of the city, in that it does not provide for redevelopment for predominantly residential uses and is therefore, illegal, and that the city should, in consequence, be enjoined from expending funds allocated to the city under it.

"If the city is improperly spending or contemplates spending funds contributed toward the project by the National Housing and Home Finance Agency, it is a matter for the consideration and concern of the fed-

eral administrator and not for the plaintiff and, on this feature, the court is of the view that the plaintiff is without legal capacity to sue." (See also *Gart* v. *Cole* (2d Cir. 1959) 263 F.2d 244, 250 [8], cert. den. 359 U.S. 978 [79 S.Ct. 898, 3 L.Ed.2d 929]; *Pittsburgh Hotels Ann., Inc.* v. *Urban Redevelopment Authority* (D.C.W.D. Penn. 1962) 202 F. Supp. 486, 492-493 [8]; *Harrison-Halstead Community Group, Inc.* v. *Housing & Home Finance Agency* (7th Cir. 1962) 310 F.2d 99, 103-105 [2-5], in each of which cases it was held that the plaintiffs therein had no standing to litigate questions under the Housing Act of 1949, as amended.) *Shipley* v. *Smith* (1940) 45 N.M. 23 [107 P.2d 1050, 131 A.L.R. 1225], cited and relied upon by the Goldmans on this point, was an action to enjoin payment of money from the county treasury and in no way dealt with the expenditure of federal funds by a state agency.

In the case at bench the federal administrator has determined that the final plan is fully qualified under the federal law, has approved a federal loan and grant-in-aid and has executed contracts with the agency to effect such loan and grant. Even if a cause of action might exist in favor of taxpayers to enjoin an unlawful use of federal funds, it is not shown that such a suit could be prosecuted in a state court. In *Hunter* v. *City of New York* (1953) 121 N.Y.S.2d 841, the plaintiff sought to have a contract between the redevelopment agency and the federal administra-

tor declared invalid on the ground that the plan failed to comply with the federal law. In dismissing the complaint, after finding that the plaintiffs lacked legal capacity to sue, the court commented at page 847 [6]: "Assuming, arguendo, plaintiffs have legal capacity to sue under the Act and may maintain the action at bar, nevertheless the complaint must be dismissed for the reason that neither this court nor any other state court is the proper forum for such suit; state courts have no jurisdiction over the acts of federal officials acting as such in the administration of the federal laws or as agencies of the federal government."

D. Conversion of Predominantly Residential Property into Predominantly Commercial Property.

The Goldmans also assert that the final plan "is incomplete and void for uncertainty in violation of the Fourteenth Amendment of the United States Constitution, and constitutes an unlawful delegation of legislative power in that, no ascertainable standard has been prescribed to enable a determination to be made by the agency as to whether the land may be acquired by condemnation in furtherance of a redevelopment project, which land is predominantly residential in character, for the purpose of converting the area into a predominantly commercial area."

The contention that the final plan is incomplete and void for uncertainty in relation to the conversion of

residential property into commercial property, is not supported by the facts. Mere reading of the proposed land use specifications as shown on the Proposed Land Use Final Plan (p. 3) and as described under the caption Land and Building Uses Proposed (final plan, pp. 19-23) is a sufficient answer.

So far as concerns any unlawful delegation of authority to decide between residential and commercial uses within the project area, no such authority appears to be delegated. The division between residential and commercial uses is fixed by the final plan adopted by the council and is not left to the discretion of the agency.

Further we find no constitutional inhibition on redevelopment of a predominantly residential area into a predominantly commercial area. (See *State* ex rel. *Dalton* v. *Land Clearance for Redevelopment Authority* (1954) 364 Mo. 974 [270 S.W.2d 44]; *Gohld Realty Co.* v. *City of Hartford* (1954) 141 Conn. 135 [104 A.2d 365, 369-370 [6]; *Cromwett* v. *City of Portland* (1954) 150 Me. 217 [107 A.2d 841, 850 [11]]; *Despatchers' Cafe, Inc.* v. *Somerville Housing Authority* (1955) 332 Mass. 259 [124 N.E.2d 528, 530 [1]]; *Foeller* v. *Housing Authority of Portland* (1953) 198 Ore. 205 [256 P.2d 752, 755 [23]]; and *Kaskel* v. *Impellitteri* (1953) *supra,* 121 N.Y.S.2d 848.) "Redevelopment," as specified in the law, includes "provision of such residential, commercial, industrial, public, or other structures or spaces as may

be appropriate or necessary in the interest of the general welfare." (§ 33013.)

As pointed out in an extensive annotation on Urban Development Laws, 44 American Law Reports 2d 1414 at page 1444, "in the two instances in which redevelopment laws have been held invalid, the courts have been particularly concerned with their application to effect the acquisition of lands for resale for a commercial purpose." The annotation cites as the two cases *Adams* v. *Housing Authority of City of Daytona Beach* (Fla. 1952) 60 So.2d 663, and *Housing Authority of City of Atlanta* v. *Johnson* (1953) 209 Ga. 560 [74 S.E.2d 891], which are two of the cases relied upon and quoted at length in the Goldman brief. Any persuasion by these cases is substantially dissipated in that we find that in *Grubstein* v. *Urban Renewal Agency of City of Tampa,* (1959), *supra,* 115 So.2d 745, the Supreme Court of Florida reconsidered its own decision in the *Adams* case and appears to have virtually overruled it. It also appears that in *Bailey* v. *Housing Authority of City of Bainbridge* (1959) 214 Ga. 790 [107 S.E.2d 812], the Supreme Court of Georgia held that an amendment to the Georgia Constitution eliminated the basis for unconstitutionality which it had found in the *Johnson case. Edens* v. *City of Columbia* (1956) 228 S.C. 563 [91 S.E.2d 280], also cited by the Goldmans, was decided subsequent to the A.L.R. annotation just referred to; it appears to express the minority view as

well as to turn upon the lack of an enabling state constitutional amendment, and is not persuasive.

Such other contentions as appear to be made or suggested by objectors or by amici curiae are without substance and so totally devoid of merit as not to be worthy of further mention.

In concluding our necessarily extensive review of this litigation we gratefully acknowledge that the well organized and comprehensively detailed memorandum of decision, prepared by the able and diligent trial judge, has been of vast assistance to this court.

For the reasons stated, the judgment in the special proceeding brought by the agency is affirmed except insofar as costs are awarded against objectors; as to such costs it is reversed with directions to the trial court to award to objectors all proper trial costs and costs on appeal. The other judgments appealed from are affirmed, with respondents to recover costs.

Gibson, C. J., Traynor, J., McComb, J., Peters, J., Tobriner, J., and Peek, J., concurred.

APPENDIX C.

California Statutes and Constitutional Provisions Involved.

ART. XIII, SECTION 19 OF THE CALIFORNIA CONSTITUTION

Sec. 19. All property in a redevelopment project established under the Community Redevelopment Law Act as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of such ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and such taxes (the word "taxes" as used herein shall include, but shall not be limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon such taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to

the effective date of such ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise included after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(b) That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph designated (a) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of

the respective taxing agencies as taxes on all other property are paid.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph designated (b) hereof may be irrevocably pledged for the payment of the principal of and interest on said loan, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

All of the provisions of the Community Redevelopment Law, as amended in 1951, which relate to the use or pledge of taxes or portions thereof as herein provided, or which, if effective, would carry out the provisions of this section or any part thereof, are hereby approved, legalized, ratified and validated and made fully and completely effective and operative upon the effective date of this amendment.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33950-33954*

§ 33950. *Division of taxes levied; allocation.* Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(1) *Portion of taxes based on last assessment roll before establishment of district.* That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise in-

cluded after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(2) *Portion of taxes in excess of amount.* That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph numbered (1) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

§ 33951. *Pledge of tax revenues for payment of*

the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph numbered (2) of Section 33950 may be irrevocably pledged for the payment of the principal of and interest on said loans, advances, or indebtedness.

§ 33952. *Taxes defined.* As used in this article the word "taxes" shall include, but without limitation, all levies on an ad valorem basis upon land or real property.

§ 33953. *Taxation of property leased by agency.* Whenever property in any redevelopment project has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons or whenever the agency ases real property in any redevelopment project to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely upon the assessed value of his or its leasehold interest.

§ 33954. *Effective date of article; approval of constitutional amendment.* This article shall become operative only if the people approve the constitutional amendment of the 1951 Regular Session of the Legislature adding Section 19 to Article XIII of the Constitution of the State and in such case at the same time as such constitutional amendment takes effect.

U. S. CODE ANNOTATED SECTION 1460(c)

§ 1460. *Definitions*

The following terms shall have the meanings, respectively, ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(c) "Urban renewal project" or "project" may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. Such undertakings and activities may include—

(1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses: *Provided,* That the requirement in paragraph (a) of this section that the area be a slum area or a blighted, deteriorated or deteriorating area shall not be applicable in the case of an open land project;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other

improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this subchapter in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan;

(5) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

For the purposes of this subchapter, the term "project" shall not include the construction or improvement of any building, and the term "redevelopment" and derivatives thereof shall mean development as well as redevelopment. For any of the purposes of section 1459 of this title, the term "project" shall not include any donations or provisions made as local grants-in-aid and eligible as such pursuant to clauses (2) and (3) of section 1460(d) of this title.

Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential

area under the urban renewal plan therefor: *Provided,* That, where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this subchapter with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this subchapter.

In addition to all other powers hereunder ve ed, where land within the purview of clause (1) (ii) or (1) (iii) of the first paragraph of this subject (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise: *Provided,* That loans and outstanding advances to any local public agency pursuant to the authorization of this sentence shall not exceed 2½ per centum of the estimated gross project costs of the projects undertaken under other contracts with such local public agency pursuant to this subchapter.

APPENDIX D.

Los Angeles City Ordinance No. 113,231.

Ordinance No. 113,231. An Ordinance approving and adopting the Redevelopment Plan for the Bunker Hill Urban Renewal Project 1B, and designating said plan as the official redevelopment plan of said project and disapproving and rejecting all alternative plans.

WHEREAS, the Council of the City of Los Angeles, (hereinafter designated "Council") on the 7th day of November, 1956, passed Ordinance No. 108,424 approving the Tentative Plan for the Bunker Hill Urban Renewal Project 1B (hereinafter designated "Project"), which ordinance was approved by Mayor Norris Poulson on the 14th day of November, 1956, and published on the 3rd day of December, 1956, in the Los Angeles Daily Journal; and

WHEREAS, the Community Redevelopment Agency of the City of Los Angeles, California (hereinafter designated "Agency"), in accordance with Section 33,700 of the Community Redevelopment Law of the State of California has prepared a Redevelopment Plan for said Project, and by its Resolution 150 adopted on the 7th day of May, 1958, approved said Redevelopment Plan, and has submitted same for approval and adoption by the Council; and

WHEREAS, said Agency has also prepared and submitted to the Council a Relocation Plan for the relocation of site occupants to be displaced in the Project area by the proposed redevelopment thereof; and

WHEREAS, there have also been submitted to the Council supplementary material and documents entitled

"Land Acquisition Plan", "Land Disposition Plan", "Property Management Plan" and Maps and Charts; and

WHEREAS, said Redevelopment Plan has heretofore been sub..itted by said Agency to the City Planning Commission of the City of Los Angeles for report and recommendation, and said report and recommendation have been made and filed all as required by Section 33,704 of the Community Redevelopment Law; and

WHEREAS, the City Planning Commission on May 15, 1958, has determined that said Redevelopment Plan conforms to the Master Plan of the City, and has recommended approval of said Redevelopment Plan, and the Council has duly considered the report, recommendation, and determination of said Planning Commission; and

WHEREAS, said Redevelopment Plan must be approved by the Council before it can be executed by the Agency; and

WHEREAS, under the provisions of the Housing Act of 1949, as amended, the Housing and Home Finance Administrator is authorized to provide financial assistance to local public agencies for undertaking and carrying out slum clearance and urban redevelopment projects; and

WHEREAS, it is provided in such act that contracts for financial aid thereunder shall require that the Redevelopment Plan for each project be approved by the governing body of the locality in which said project is situated and that such approval shall include findings by the governing body that:

a. The financial aid provided and to be provided in the contracts is necessary to enable land in the project area to be redeveloped in accordance with the Redevelopment Plan for the project area;

b. The said Plan for the project area will afford a maximum opportunity consistent with the sound needs of the locality as a whole for the redevelopment of such area by private enterprise;

c. The said Plan conforms to the Master Plan for the development of the locality as a whole; and

WHEREAS, the Agency has applied for financial assistance under such act and has entered into a contract for financial assistance under such act with the United States of America, acting by and through the Housing and Home Finance Administrator, pursuant to which federal funds are provided for the slum clearance and urban redevelopment project known as the Bunker Hill Urban Renewal Project 1B; and

WHEREAS, said Agency has applied for additional financial assistance under such act, and proposes to enter into an additional contract or contracts with the Housing and Home Finance Administrator for making available additional financial assistance for the said Project; and

WHEREAS, said Redevelopment Plan prescribes certain land uses for the Project area and its accomplishment will require, among other things, changes in zoning, the opening, closing, vacation, realignment and changes in the grade and layout of streets, alleys and other public ways, the location, relocation, abandonment, removal, construction and reconstruction of sewer and water mains and other public facilities and utilities, and other public action; and

WHEREAS, in order that said Redevelopment Plan and its purposes be accomplished it is necessary that the Council take appropriate official action respecting the redevelopment Plan for said Project, in conformity with the California Community Redevelopment Law and the contracts for federal financial assistance between said Agency and the United States of America; and

WHEREAS, the Council set a time and place for a public hearing on the adoption of the Redevelopment Plan and for the consideration of the Relocation Plan, to wit: the 24th day of June, 1958, at 10:30 A.M. in the Council Chambers of the City Hall and caused to be published a notice of such hearing in the Los Angeles Daily Journal, a newspaper of general circulation in said City, once a week for four successive weeks prior to the date of said hearing, a copy of which notice and an affidavit of publication of the same are on file with the City Clerk; and

WHEREAS, said public hearing was duly held at the time and place fixed therefor in the notice of said public hearing and was thereafter continued from time to time until the 8th day of January 1959, at which time the hearing was closed and the matter then continued to the 9th day of February, 1959, for determination; and

WHEREAS, the Council in connection with said hearing did consider:

a. The Redevelopment Plan together with maps and photographs and documents related thereto on file with the City Clerk as well as the recommendation and report of the Planning Commission thereon;

b. The Relocation Plan and said Agency's proposals with respect to the relocation of the Project site occupants;

c. The economic feasibility of the Redevelopment Plan together with the proposed method of financing the Redevelopment of the Project area contemplating financial assistance under Title 1 of the Housing Act of 1949, as amended, and the issuance and sale of tax allocation bonds by said Agency pursuant to Articles 3 and 4, Chapter 5 of the Community Redevelopment Law;

d. The necessity for the acquisition of the real property in said Project area pursuant to the Redevelopment Plan and the proposal for making of said real property available for improvement, development or redevelopment by private enterprise or public agencies as authorized by the Community Redevelopment Law, including but not limited to the demolition and removal of buildings and improvements and the installation, construction or reconstruction of streets, utilities and other site improvements;

e. All written communications with reference to the Redevelopment Plan and all related matters;

f. All alternative plans submitted; and

WHEREAS, at said public hearing the Council provided an opportunity for all persons and organizations to be heard, and received and considered all evidence and testimony presented for or against the adoption of each alternative plan submitted and said Redevelopment Plan, and

WHEREAS, the Redevelopment Plan and the Relocation Plan have been on file in the office of the City

Clerk in the City Hall, and in the office of said Agency at 609 South Grand Avenue, Los Angeles, California, for public inspection during the period of notice given for said public hearing:

NOW, THEREFORE, THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. It is hereby found and determined in accordance with the Community Redevelopment Law that:

a. The Redevelopment Plan for the Project as adopted by the Agency, on May 7, 1958, and submitted to the Council for approval is based upon the Tentative Plan heretofore approved, and conforms to the Master Plan and this City;

b. Said Redevelopment Plan will redevelop the Project area in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety and welfare, and the adoption and carrying out of said Plan is economically sound and feasible;

c. Said Redevelopment Plan is economically sound and feasible, and the carrying out of the said Plan will promote the public peace, health, safety and welfare of the City and will effectuate the purposes and policy of the Community Redevelopment Law;

d. Said Redevelopment Plan as submitted by the Agency is preferable to any alternative plan submitted because the Council deems said Plan will best redevelop the Project area in conformity with the purposes and policy of said Law and said

Master Plan and will require the least interference with the continued enjoyment of existing property rights consistent with the purposes of said Law.

Sec. 2. It is further found and determined that:

a. The financial aid provided and to be provided in the contracts with the United States of America as hereinbefore referred to and as described in the Redevelopment Plan is necessary to enable land in the Project area to be redeveloped in accordance with the Redevelopment Plan for the Project area;

b. The redevelopment Plan for said Project area will afford the maximum opportunity consistent with the sound needs of the locality as a whole for the redevelopment of such area by private enterprise.

c. Each of the alternative plans submitted to the Council are hereby disapproved and rejected.

Sec. 3. It is hereby found and determined that:

a. The Redevelopment Plan contains adequate provisions for the payment as required by law for real property in said Project area to be acquired through negotiations or by condemnation out of funds to be made available by the Housing and Home Finance Administrator, pursuant to contract as provided in Title I of the Housing Act of 1949, as amended, together with local grants-in-aid to be made by said Agency from the proceeds of its bond issue as proposed in said Plan;

b. Adequate permanent housing facilities will be made available in the community for displaced

occupants of present housing facilities within said Project area at rents comparable to those in the community at the time of their displacement;

The Council is satisfied that such permanent housing facilities will be made available within three years from the time such occupants are displaced, and that pending the development of such facilities, there will be available to such displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement; and reference is hereby made to the Relocation Plan for the details and particulars proposed for relocating said displaced occupants;

c. The Redevelopment Plan contains adequate safe-guards that the work of redevelopment in said Project area will be carried out pursuant to said Plan and contains provisions for the retention of controls and the establishment of restrictions and covenants running with the land sold or leased for private use for such periods of time and under such conditions as are necessary to effectuate the purposes of the California Community Redevelopment Law and Title I of the Housing Act of 1949, as amended.

Sec. 4. The Planning Commission in its report heretofore filed has determined that the Redevelopment Plan is in conformance with the Master Plan for the City of Los Angeles, and has approved said Redevelopment Plan, all in accordance with Section 33,704 of the Community Redevelopment Law.

Sec. 5. The Redevelopment Plan referred to in Section 1 hereof, is hereby approved and adopted and

designated as the Official Redevelopment Plan of the Bunker Hill Urban Renewal Project 1B.

Sec. 6. In accordance with Section 33,735 of the Community Redevelopment Law, the Council hereby declares its intention, when requested by the Agency, to institute the necessary proceedings according to law to carry into effect the provisions of said Plan for changes in zoning, the opening, closing, widening of, or changing the grade of the streets and alleys or any other modification of the street layout in said Project area, as proposed and outlined in said Plan.

Sec. 7. It is hereby determined by the Council that in the course of physical development of the City of Los Angeles, certain public works improvements, such as the replacement or enlargement of water and sewer mains and storm drains would occur within the boundaries of said Project and in adjoining areas as shown by the Plan and proceedings for closing, widening or changing grades of streets and alleys and for modification of street layout, within the boundaries of said Project and said adjoining areas would be instituted and that it is in the best interests of the City of Los Angeles that these improvements and other improvements needed for the redevelopment of the Project area be made according to the Redevelopment Plan. Sufficient monies will be made available from the Agency's tax allocation bond issue and from other funds requiring no appropriation by the City Council to pay the cost of all such improvements.

Sec. 8. The Redevelopment Plan provides for the issuance of bonds by the Agency. The provisions for the payment of the principal and interest on said bonds from a portion of the tax collections within said Project

area, as provided in Article 4, Chapter 5 of the Community Redevelopment Law and Section 19 of Article XIII of the California Constitution, is adequate, in the opinion of the Council, to provide for the payment of such principal and interest when they become due and payable. Said Plan also provides for the issuance of obligations of said Agency evidencing the indebtedness of said Agency to the Federal Government pursuant to the additional contract or contracts for financial assistance hereinbefore referred to. The provision in said Plan for the payment of the principal and interest on said obligations when they become due and payable, from the proceeds of the disposition of land in said Project and from the capital grant or grants from the Federal Government pursuant to such contract or contracts, is adequate, in the opinion of the Council.

Sec. 9. Prior to the execution by the Agency of any contract for the sale or other disposition of land in the Project area other than a contract arrived at as the result of open competitive bidding, the Agency shall submit such contract to the Council for its approval. Within 30 days after such contract is submitted to it, the Council shall approve or disapprove said contract. If the Council fails to approve or disapprove within the time above mentioned, such contract shall be deemed approved and the Agency may execute the same and proceed in accordance with the terms thereof.

Sec. 10. Unless otherwise provided in the future by an appropriate resolution of the Council, the aggregate principal face amount of Agency bonds referred to in Sec. 8 hereof, payable from taxes allocated, as provided by Article 4, Chapter 5 of the California Community Redevelopment Law, shall not exceed $20,000,-

000, and said bonds shall not have a maturity date of more than 40 years from date of issuance. The aforesaid limitations in this Section 10 apply to, and only to, those Agency bonds the principal and interest of which are payable in whole or in part from taxes allocated to and paid into a special fund of the Agency, pursuant to the provisions of Article 4, Chapter 5 of the California Community Redevelopment Law.

Sec. 11. The purposes and intent of this Council with respect to said Project area are to eliminate conditions of slum and blight existing in said Project area, and thereby alleviate the problems of crime prevention, correction, prosecution and punishment and the treatment of juvenile delinquency, preserve the public health and safety, and make possible the maintenance of adequate police, fire and accident protection and other necessary public services and facilities in the area. This Council hereby finds and determines that said Project area is a blighted area within the meaning of Article 2 of Chapter 1 of the Community Redevelopment Law and that the conditions which characterize said Project area, and thereby constitute it a blighted area, are more fully described in the Report on the Tentative Plan for said Project area submitted with the Tentative Plan, approved by Ordinance No. 108,424 by the Council on November 7, 1956.

Sec. 12. Said Agency shall in any year during which it owns property in said Project area pay to the City of Los Angeles and the County of Los Angeles and to every district or other public corporation which would have levied a tax upon such property had it not been exempt, an amount of money in lieu of taxes. The term "an amount of money in lieu of taxes" is hereby

defined as such an amount in the aggregate, which together with all taxes actually levied on all taxable property in said Project area, is equal to the total amount of taxes which would have been due from the taxable property in said Project area based on the 1958-1959 equalized assessment roll at the rates legally fixed by each such taxing agency for the fiscal year for which the in lieu payment is made; provided that nothing in this section shall require the payment of any amount of money in excess of the amount described in the Plan as available for payment in lieu of taxes during Project execution. Provided, further, that nothing in this section shall require or obligate the Agency to make any payment of money in lieu of such taxes from any account or funds established pursuant to any Federal Aid Contract for the Project.

Sec. 13. The Council is aware, and hereby indicates its knowledge that upon and after the effective date of this ordinance, the self-executing provisions of Article 4, Chapter 5 of the Community Redevelopment Law, providing for certain divisions and allocations of tax moneys, will become applicable.

Sec. 14. Reference is hereby made to the following documents:

a. Redevelopment Plan and accompanying maps,

b. Relocation Plan,

c. Land Acquisition Plan,

d. Land Disposition Plan,

e. Property Management Plan, for the full details of the Redevelopment Plan hereby approved all of said plans maps and reports being on file in the office

of the City Clerk and said Redevelopment Plan being incorporated herein by reference and made a part hereof.

Sec. 15. The Redevelopment Plan provides for the participation in the redevelopment of property in the Project area by owners of property in said area and Owner-Participation Rules have been prepared and adopted by the Agency in accordance with Section 33,701 of the Community Redevelopment Law. Said rules are on file in the office of the Agency and available for inspection. Due to the size and nature of the improvements proposed in the Project area it is deemed to be in the best interests of the Agency and the possible Owner-Participants that said owners have as much time as possible for consideration of the problems involved and to enter into binding agreements in accordance with said Plan as permitted by Section 33,745 of said Law and the 30-day period allowed for the execution of such Owner-Participation Agreements as provided in said section is hereby extended for an additional period of 60 days as authorized by said section.

Sec. 16. Additional financial assistance under the provisions of Title I of the Housing Act of 1949, as amended, is necessary to enable the land in the Project area to be redeveloped in accordance with the Redevelopment Plan for the Project area and, accordingly, the filing by the Agency of an application or applications for such financial assistance under said Title I is hereby approved.

Sec. 17. The boundaries of the Bunker Hill Urban Renewal Project 1B are described as follows:

(1) Beginning at the intersection of the southeasterly right-of-way line of the Harbor Freeway and the northeasterly line of First Street as it exist-

ed on August 11, 1955, this point being the most northerly corner of Fremont Avenue and First Street; thence southeasterly along said northeasterly line of First Street to the southeasterly line of Hill Street;

(2) thence southwesterly along said southeasterly line of Hill Street to the southwesterly line of Fourth Street;

(3) thence northwesterly along said southwesterly line of Fourth Street to the Southeasterly line of Olive Street;

(4) thence southwesterly along said southeasterly line of Olive Street to its intersection with the southeasterly prolongation of the southwesterly line of Lot 6, Block 107, of Bellevue Terrace Tract as per map recorded in book 2, page 585 of miscellaneous records in the office of the County Recorder of Los Angeles County;

(5) thence northwesterly along said southeasterly prolongation and the southwesterly line of said Lot 6 to the most westerly corner of said Lot 6;

(6) thence northeasterly along the northwesterly line of said Lot 6 to the most southerly corner of the northeasterly 34 feet of Lot 4 of the H. W. Mills Subdivision as per map recorded in book 37, page 62 of the miscellaneous records in the office of said County Recorder;

(7) thence northwesterly along the southwesterly line of said northeasterly 34 feet of Lot 4 to the southeasterly line of Grand Avenue;

(8) thence southwesterly along said southeasterly line of Grand Avenue to its intersection with

the southeasterly prolongation of the southwesterly line of Lot 1 of the Rohde Tract as per map recorded in book 12, page 21 of maps in the office of said County Recorder;

(9) thence northwesterly along said prolonged line and said southwesterly line of Lot 1 to the southeasterly line of the alley adjoining said Lot 1 to the northwest;

(10) thence northeasterly along the southeasterly line of said alley to the most southerly corner of Lot 2, Tract No. 20898 as per maps recorded in book 564, pages 14 and 15 of maps in the office of said County Recorder;

(11) thence northwesterly along the southwesterly line of said Lot 2 to the southeasterly line of Hope Street;

(12) thence southwesterly along said southeasterly line of Hope Street to its intersection with the southeasterly prolongation of the northeasterly line of Tract No. 7675 as per map recorded in book 187, page 4 of maps in the office of said County Recorder;

(13) thence northwesterly along said prolonged line and the northeasterly line of said Tract No. 7675 to the most northerly corner of said Tract;

(14) thence southwesterly along the northwesterly line of said Tract No. 7675 and the southwesterly prolongation of said northwesterly line of Tract No. 7675 to the southwesterly line of Fifth Street;

(15) thence northwesterly along said southwesterly line of Fifth Street to its intersection with the southwesterly prolongation of a line parallel to,

and distant 25 feet southeasterly from, the northwesterly line of Lot 1, Block 13 of the Woolen Mills Tract as per map recorded in book 42, pages 409 and 410 of Deeds in the office of said County Recorder;

(16) thence northeasterly along said prolonged line to the southwesterly line of said Lot 1, said point being on the southeasterly right-of-way line of the Harbor Freeway;

(17) thence along said southeasterly right-of-way line of the Harbor Freeway (said line follows existing 6-foot chain link fence) in all its various courses to a point at the most westerly corner of Fourth Street and Figueroa Street;

(18) thence northeasterly to the most northerly corner of Fourth Street and Figueroa Street;

(19) thence along the southeasterly right-of-way line of the Harbor Freeway (said line follows existing 6-foot chain link fence) in all its various courses to its first intersection with the southwesterly line of Third Street;

(20) thence southeasterly along the southwesterly line of Third Street being also on the southeasterly right-of-way line of the Harbor Freeway, a distance of 124.86 feet;

(21) thence easterly in a direct line to the intersection of the northeasterly line of Third Street and the southeasterly right-of-way line of the Harbor Freeway;

(22) thence along the southeasterly right-of-way line of the Harbor Freeway (said line fol-

lows existing 6-foot chain link fence and/or retaining wall) in all its various courses, continuing across Second Street and First Street to the northeasterly line of First Street, this being the most northerly corner of First Street and Fremont Avenue and the point of beginning.

Sec. 18. Whenever, in the accomplishment of the Redevelopment Plan it becomes necessary to institute any proceeding for change of zone, change of grade, street opening or widening, or other similar proceeding, the City will institute the proceedings, where the applicable law permits, without cost to the Agency. In no event shall any charge be made to the Agency, or any deposit be required of the Agency, where a charge or deposit would not be required of any other governmental agency.

Sec. 19. Within 90 days after June 30 of each year following the effective date of this ordinance, and until the Redevelopment Plan has been fully accomplished, the Agency shall file with the Council a report containing a statement of the progress made under the Redevelopment Plan, the financial condition of the Agency, and such other information concerning Bunker Hill Urban Renewal Project 1B as the Council may request.

Sec. 20. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles of March 19, 1959, and was passed at its meeting of March 31, 1959.

Walter C. Peterson,
City Clerk.
By A. M. Morris, Deputy.

Approved April 2, 1959.
Norris Pouison,
Mayor.

File No. 85141
(B6882) Apr 17 1t

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IN THE

Supreme Court of the United States

October Term, 1964

Case No. 416

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS OR AFFIRM.

Appellee in the above-entitled case moves to dismiss and/or affirm on the following grounds:

1. Only one of the purported federal questions set forth in appellants' (the Goldmans) Statement of Jurisdiction (as supplemented) was even arguably seasonably raised and preserved before the California courts; and

2. None of the purported federal questions set forth in the Goldman's Statement of Jurisdiction are substantial, and there is no need for plenary review thereof.

Opinions Below.

The opinion of the California Supreme Court is reported as *In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 37 Cal. Rptr. 74 (1964). The opinion of the California District Court of Appeal is reported as *Community Redevelopment Agency v. Goldman*, 33 Cal. Rptr. 92 (1963). Said opinions are also printed as appendices to the Goldmans' Statement of Jurisdiction.

Jurisdiction.

There is a clear defect of jurisdiction with respect to the first five questions set forth in the Goldmans' Statement of Jurisdiction in that:

1. The Goldmans failed to draw into question before the California courts the validity of Article XIII, §19 of the California Constitution under the Fourteenth Amendment to the United States Constitution;

2. The Goldmans failed to preserve their contention that California Health and Safety Code §§33950-33954 violated the due process clause of the Fourteenth Amendment to the United States Constitution by failing to assert that contention in their brief in the California appellate courts;

3. The Goldmans failed to preserve their contention that Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 violated Article I, §10 of the United States Constitution by failing to assert that contention in their brief in the California appellate courts; and

4. The Goldmans failed to assert before any California court that either the actions of appellee (the "Agency") or the Council of the City of Los Angeles (the "City Council") with respect to 42 U.S.C.A.

§1460, or the interpretation by the trial court of said section and the rights of the Goldmans thereunder were or would be in any way violative of any rights of the Goldmans under the United States Constitution (except to the extent raised in the Goldman Petition for Rehearing below, at p. 2); and

5. None of the purported federal questions set forth in the Goldmans' Statement of Jurisdiction are substantial.

The only question set forth in the Goldmans' Statement of Jurisdiction which arguably was raised in the trial court and preserved before the California appellate courts is that set forth as numbered paragraphs 6 on page 4 thereof. That issue related to the relative position of owner-participants and redevelopers with respect to the cost of public site improvements inferentially buried in the welter of contentions made by the Goldmans relating to this general area.

The contentions raised by the Goldmans at the various stages of this proceeding have been so varied and have changed so much that those here relevant are set forth side by side in Appendix "A" hereto in the forms taken by each thereof before the trial court, the California appellate courts and in the Statement of Jurisdiction herein, so that relatively easy visual comparison can be made.

The prerequisites to jurisdiction of 28 U.S.C. §1257 have not been met by the Goldmans as to the first five questions set forth in their Statement of Jurisdiction [*Chicago, Ind. & L. R. Co. v. McGuire,* 196 U. S. 128, 131-133 *Radio Station WOW, Inc. v. Johnson,* 326 U. S. 120, 128; *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, 307-308, 310-311; *Hulbert v. Chicago,* 202 U. S. 275, 280-281].

Questions Presented.

1. Is jurisdiction present with respect to the questions set forth in the Goldmans' Statement of Jurisdiction especially questions one through five?

2. Assuming jurisdiction, may the people of California, by an amendment to the California Constitution (Article XIII, §19), provide for the use of the tax revenue derived from the increased assessed valuation in a redevelopment project area, brought about by the redevelopment thereof, to finance that redevelopment in whole or part?

3. Assuming jurisdiction, is the charter of the City of Los Angeles (the "City") a contract within the scope of Article I, §10 of the United States Constitution?

4. Assuming jurisdiction, does 42 U.S.C.A. §1460 permit the loan or grant of federal funds to redevelopment projects which provide for the redevelopment of a predominantly residential area for predominantly non-residential uses?

a. Assuming it does not, may taxpayers sue to enjoin the expenditure of such federal funds on the grounds that the project does not meet the standards of eligibility in said section?

b. Assuming taxpayer standing, does a state court have jurisdiction to adjudicate with respect to the action of the federal administrator in making such funds available?

5. Assuming jurisdiction, is Los Angeles City Ordinance No. 113,231 invalid under the equal protection clause of the Fourteenth Amendment for adopting

a redevelopment plan with related owner participation rules which provide:

(i) that owner-participants (landowners in the project area who agree to retain their land and redevelop it in accordance with the redevelopment plan) must assume liability for their pro rata share of the cost of public site improvements (utilities, sewers, sidewalks, etc.) to the extent such improvements are a net benefit to their property as reflected in the re-use value thereof; and

(ii) redevelopers (those who purchase property from the Agency after the clearance of the area and the installation of new public site improvements) are required to pay the fair market value for the property they purchase, which necessarily reflects the value of the site improvements?

Statement of the Case.

On March 31, 1959 the City Council adopted Ordinance No. 113,231 which approved and adopted The Redevelopment Plan For The Bunker Hill Urban Renewal Project 1B (the "Final Plan"). Thereafter, on May 25, 1959, the Goldmans filed a complaint, and later an amended complaint, for a declaratory judgment and injunction [C. T. 154].

On April 11, 1960, the Goldmans' action was ordered consolidated for purposes of trial with five other actions, including a special proceeding brought by the Agency.

In the Joint Pre-Trial Statement, and Amendment thereto, of the Goldmans and the Agency, which set forth the legal issues to be tried between them, and the

Goldmans' contentions with respect to those issues [C. T. pp. 548-573, 574-580], the Goldmans

(i) failed to contend that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution [C. T. pp. 575-576, 579; see Appendix "A"];

(ii) failed to assert any contention that any action under or interpretation of 42 U.S.C.A. §1460 was or would be violative of the Fourteenth Amendment and the United States Constitution [C. T. pp. 562, 578; see Appendix "A"]:

In such Joint Pre-Trial Statement, the Goldmans did contend

(a) that California Health and Safety Code §§33950-33954 and Final Plan Section C.8.d.(1) and (2) violated the Fourteenth Amendment to the United States Constitution [C. T. pp. 575, 576; see Appendix "A"];

(b) that Article XIII, §19, California Health and Safety Code §§ 33950-33954 and Ordinance No. 113,231 violated Article I, §10 of the United States Constitution by allegedly interfering with the Los Angeles City Charter [C. T. pp. 576, 579; see Appendix "A"];

(c) that the Final Plan did not qualify for federal financial assistance under 42 U.S.C.A. §1460 [C. T. p. 578; see Appendix "A"].

Arguably, the Goldmans also contended in the Joint Pre-Trial Statement that owner-participants and redevelopers were treated unequally in violation of the Fourteenth Amendment to the United States Constitution [C. T. pp. 576-578; see Appendix "A"].

It will be noted that only two and one-half of the questions set forth in the Statement of Jurisdiction (one-half of question one, and questions two and six) were raised before the trial court.

On appeal, the Goldmans failed to assert in their brief before the California appellate courts

(i) that Article XIII, §19 of the California Constitution violated either the Fourteenth Amendment to or Article I, §10 of the United States Constitution [Goldman Opening Brief below, pp. 27-50, esp. pp. 38-41; and see Appendix "A"];

(ii) that California Health & Safety Code §§33950-33954 violated either the Fourteenth Amendment to or Article I, §10 of the United States Constitution [Goldman Opening Brief below, pp. 27-50; and see Appendix "B"]; or

(iii) that any non-compliance with 42 U.S.C.A. §1460, or the interpretation of the trial court regarding the Goldmans' standing to sue thereunder, was violative of the Fourteenth Amendment to the United States Constitution [Goldman Opening Brief below, pp. 81-88, and, partially, 95-114; see Appendix "A"]. This point was partially raised in a Petition for Rehearing [see Appendix "A"]. The only reference in the Goldman Opening Brief below to the contentions made before the trial court, but not re-asserted before the California appellate courts was by way of a recital of the issues before, and the findings of fact and conclusions of law of the trial court [Goldman Opening Brief below, pp. 1-27].

The Goldmans did contend in their brief before the California appellate courts that an alleged dis-

as to the cost of public site improvements violated the equal protection clause of the Fourteenth Amendment to the United States Constitution [Goldmans' Opening Brief below, pp. 114-137; see Appendix "A"].

In summary:

1. The Goldmans failed entirely to contend before the California courts that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution.

2. The Goldmans did contend before the trial court that California Health & Safety Code §§ 33950-33954 violated the Fourteenth Amendment to the United States Constitution, but failed to re-assert this point before the California appellate courts.

3. The Goldmans did contend before the trial court that Article XIII, §19 and California Health & Safety Code §§33950-33954 violated Article I, §10 of the United States Constitution, but failed to reassert these points before the California appellate courts.

4. The Goldmans failed to assert in the trial court and in their brief on appeal that non-compliance with 42 U.S.C.A. §1460, or denying the Goldmans standing to enjoin the expenditure of federal funds allegedly wrongfully made available to the Agency because of non-compliance with §1460, violated any rights of the Goldmans under the United States Constitution.

The California Supreme Court rejected those contentions of the Goldmans which were raised in their brief [*In re Redevelopment Plan For Bunker Hill,* 61 Adv. Cal. 1, 51-57, 37 Cal. Rptr. 74 (1964)], and denied their petition for rehearing without comment.

ARGUMENT.

I.

The Goldmans Failed to Raise or Preserve Before the California Courts Questions One Through Five Set Forth in Their Statement of Jurisdiction.

It is well-settled under California practice that unless modified, the Pre-Trial Order in a case controls the issues which may be tried, and that questions not raised in the trial court will not be considered on appeal [Rule 216 (formerly Rule 8.8), Judicial Council Rules for the Superior Courts; *Everly Enterprises, Inc. v. Altman,* 54 Cal. 2d 761, 765-766, 8 Cal. Rptr. 455 (1960); *Baird v. Hodson,* 161 Cal. App. 2d 687, 690, 327 P. 2d 215 (1958); and *Jenner v. City Council,* 164 Cal. App. 2d 490, 498, 331 P. 2d 176 (1958)]. This includes constitutional issues [*Hershey v. Reclamation District No. 108,* 200 Cal. 550, 564, 254 Pac. 542; *Jenner v. City Council, supra*].

As stated in 3 Cal. Jur. 2d, Appeal and Error, §140,

> "It is a general rule of appellate review, early established and long adhered to, that questions not raised in the trial court will not be considered on appeal."

The Pre-Trial Order in the trial court incorporated the Joint Pre-Trial Statement, as amended, for the statement of issues [C. T. pp. 545-547]. No attempt was made to modify or amend the Pre-Trial Order.

In view of California practice, it is fatal to jurisdiction for the Goldmans to have failed to contend before the trial court (1) that Article XIII, §19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution, and (2) that non-

compliance with 42 U.S.C.A. §1460, or denying the Goldmans standing to enjoin the expenditure of federal funds allegedly wrongfully made available to the Agency because of non-compiance with §1460, violated any rights of the Goldmans under the United States Constitution [*Bailey v. Anderson,* 326 U. S. 203, 206-207; *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, 308; *Dewey v. Des Moines,* 173 U. S. 193, 197-198].

Had these points been raised in the trial court, the failure to assert them in the Goldmans' opening brief below would, under long-settled California practice, be deemed as a waiver and abandonment of the issues, which would therefore not be considered by the California appellate courts [*Roberts v. Krafts,* 141 Cal. 20, 25, 74 Pac. 281 (1903); *Mayne v. San Diego Elec. Ry. Co.,* 179 Cal. 173, 179, 175 Pac. 690 (1918); *Souza v. Joseph,* 22 Cal. App. 179, 190, 133 Pac. 981 (1913); *Wheeling v. Financial Indemnity Co.,* 201 Cal. App. 2d 36, 44-45, 19 Cal. Rptr. 879 (1962)].

The failure of the Goldmans to assert in their brief on appeal (1) that California Health and Safety Code §§33950-33954 violated the Fourteenth Amendment to the United States Constitution, and (2) that Article XIII, §19 and California Health & Safety Code §§33950-33954 violated Article I, §10 of the United States Constitution likewise creates a fatal jurisdictional defect as to those points [*Hulbert v. Chicago,* 202 U. S. 275, 280-281; *C. I. O. v. McAdory,* 325 U. S. 472, 477].

Any references to "unconstitutionality" with respect to the above points which may appear in the Goldmans' opening brief below, where not specifically refer-

able to the California Constitution, are at best ambiguous and are therefore presumed to refer to the California Constitution [*Miller v. Cornwall R.R. Co.*, 168 U. S. 131, 134; *Harding v. Illinois*, 196 U. S. 78, 88, *Bowe v. Scott*, 233 U. S. 658, 664-665; *Thomas v. Iowa*, 209 U. S. 258, 263].

It is submitted that no basis for the exercise of jurisdiction by this Court is present upon the record herein with respect to questions one through five set forth in the Goldmans' Statement of Jurisdiction at pages 3-4 thereof.

II.

The Questions Set Forth in the Goldmans' Statement of Jurisdiction Are Not Substantial.

A. No Important Questions of Federal Law Are Raised by the Goldmans.

Not one of the questions set forth in the Goldmans' Statement of Jurisdiction merits review by this Court. The questions raised by the Goldmans as to tax allocation financing will apply only in California and Minnesota, which are the only states which provide for such financing. Further, the only rights asserted by the Goldmans with respect to such financing are those of other governmental entities within California. The Goldmans do not attempt to point out how a decision on the matter by this Court would in any way affect or preclude future litigation between other parties, or otherwise set at rest an important, open question of policy under federal law.

The contentions of the Goldmans relating to 42 U S. C. A. Section 1460 do raise the question of whether or not a taxpayer has a sufficient interest

in the federal treasury to support an action to enjoin an allegedly illegal expenditure therefrom. However, this question is so foreclosed by prior opinions of this Court as to be lacking in substantiality. It cannot be said to be an area churning with currrent controversy.

The contentions of the Goldmans relating to owner participation are so clearly without merit that no question is raised as to the correctness of the decision of the California Supreme Court with respect thereto.

B. The Contentions of the Goldmans Relating to Tax Allocation Are Clearly Erroneous.

The Goldmans' contentions as to the tax allocation provisions of the California Constitution and States apparently are or will be twofold—(1) that these provisions are invalid because they do not require the obtaining of consent from the other governmental entities levying taxes in the redevelopment project areas before a redevelopment plan can be adopted which provides for tax allocation financing; and (2) the City Charter of the City of Los Angeles is allegedly a contract within Article I, Section 10 of the United States Constitution which contract is impaired by said allocation provisions.

1. *Article XIII, §19 and California Health and Safety Code §§ 33950-33954 Do Not Violate the Fourteenth Amendment to the United States Constitution.*

The Goldmans have not attempted to show by supporting argument in their Statement of Jurisdiction upon what basis they contend Article XIII, §19 and §§ 33950-33954 to be repugant to the Fourteenth Amendment.

Article XIII, §19 of the California Constitution provides for the use of increases in property tax revenue from redevelopment project areas derived from the increase in assessed valuation within the area brought about by redevelopment, to finance such redevelopment in whole or in part.

It also expressly ratified and authorized California Health and Safety Code §§ 33950-33954, which contain identical provisions.

In operation, these provisions operate to allow the various taxing entities such as the City, the County, etc., to impose their current tax rate on the assessed valuation of a redevelopment project area as of the last equalized assessment roll prior to the adoption of the redevelopment plan. The proceeds thereof are collected by the County Tax Assessor and disbursed to the various taxing entities in the usual way. However, the increase in valuation of the redevelopment project area is, in effect, not subject to taxation for usual City, County and District purposes. The tax funds produced by the imposition of the current tax rate of the various taxing entities on this increase in valuation, while levied and collected in the usual way, are paid to the special fund of the redevelopment agency to pay all or a portion of those project expenses not covered by the federal subsidy.

Amici curiae have sought to file a brief in support of the contention of the Goldmans here in question.

Significantly, the Goldmans have never raised the following two point raised by *amici curiae* (but have referred in their Supplement to Statement of Jurisdiction to a similar agreement made by other *amici curiae* below):

1. Do the California tax allocation provisions provide for taxation without representation?

2. May the City Council be delegated the authority to adopt redevelopment plans providing for tax allocation financing?

It is submitted, as argued in the Agency's brief in opposition to the motion of *amici curiae* for leave to file a brief, that neither of these points have merit.

The contention that the tax allocation provisions provide for taxation without representation rests upon the premise that by in effect exempting a portion of the property in the redevelopment area from taxation, those other governmental entities which also levy taxes on the redevelopment project area must increase their taxes upon property outside the project area and outside of the city. This, it is contended is taxation by the City Council upon non-city property owned by persons not represented on the City Council.

The basic fallacy in this argument is that were it not for the redevelopment project which improves the deteriorated area, there would be no increased valuation to be, in effect, temporarily exempted from taxes. Therefore, the tax rates elsewhere would, absent the redevelopment, be just as high as if no project to replace a slum or blighted area with a well-planned development had been undertaken.

Insofar as the argument may be that taxes are being illegally diverted from the other taxing entities, or that such entities are being deprived of a portion of their tax base, it is well-established that units of local government have no rights under the federal constitution as against their creator, the state [*Williams v.*

Baltimore, 289 U. S. 36, 40; see also *Mallon v. City of Long Beach,* 44 Cal. 2d 199, 209, 282 P. 2d 481 (1955)],

Further, under California law, no taxing entity ever obtains a vested right to tax any particular property [*County of Mariposa v. Merced Irr. Dist.,* 32 Cal. 2d 467, 474, 196 P. 2d 920 (1948)].

Rather than taxation without representation, the nearest analogy to the California tax allocation system of financing redevelopment in whole or part, is the system used in other states of granting a flat tax exemption to the increased valuation in redevelopment areas. This system has been upheld wherever challenged [*Murray v. La Guardia,* 291 N. Y. 320, 52 N. E. 2d 884 (1943), *cert. den.,* 321 U. S. 771; *Land Clearance Auth. v. St. Louis,* 27 S. W. 2d 58 (Mo. 1954); *Redfern v. Board of Comrs. of Jersey City,* 137 N. J. L. 356, 59 A. 2d 641 (1948); *Dodge v. The Prudential Ins. Co. of America,* 343 Mass. 378, 179 N. E. 2d 234 (1961)].

Under the reasoning of the Goldmans the City could never purchase property for streets, parks, civic buildings, or otherwise, without the consent of the other taxing agencies levying taxes thereon, because this would make the property tax exempt, thereby causing an increase in the taxes levied by such other agencies upon other property outside of the City. This obviously is not the law.

It is submitted that the contention that the tax allocation provisions of California law provide for taxation without representation cannot be sustained.

It is also difficult to imagine what other agency should be empowered to adopt redevelopment plans

other than the local legislative body of the community within which the slum area is located. The Goldmans appear to contend that such an agency is a "partisan agency" and therefore cannot be given such authority, when tax allocation is involved. This contention would appear to be fully answered by the authorities relating to the contentions regarding taxation without representation, above.

2. *Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 Do Not Violate Article I, §10 of the United States Constitution.*

The Goldmans have contended that the City Charter of the City is a contract protected by Article I, §10 of the United States Constitution, and that the City may not take advantage of the tax allocation provisions without amending its Charter, which provides for the disbursement of municipal taxes.

This position is completely untenable. The City had full power to adopt the Final Plan, including its tax allocation provisions. The City has ample authority under its Charter to avail itself of the powers granted to cities under the California Redevelopment Law. Thus, Section 2 of the Charter provides in part as follows:

> "Sec. 2. The City of Los Angeles, in addition to any other rights and powers now held by it, or that hereafter may be granted to it under the constitution or laws of the state, shall have the right and power, subject to the restrictions in this charter contained:
>
> * * *

"(5) To exercise any or all rights, powers, privileges and procedures now or hereafter established or authorized for municipalities, or for the City of Los Angeles, by any law of the State of California, by this charter, or by other lawful authority.

* * *

"(10) To exercise each and every of the powers which a municipal corporation might or could exercise under the Constitution of the State of California." (Stats. 1925, Res. Ch. 25, p. 1028).

Further, when a city operates under a law such as the California Redevelopment Law, the terms of that law govern, even though procedures required by the city's Charter may differ [*Drake v. City of Los Angeles,* 38 Cal. 2d 872, 874, 243 P. 2d 525 (1952)]. In such cases the city operates as an administrative agency of the state, designated by the state to carry out state programs at the local level [*Housing Authority v. City of Los Angeles,* 38 Cal. 2d 853, 862, 243 P. 2d 515 (1952); *Andrews v. City of Los Angeles,* 175 Cal. App. 2d 459, 461-463, 346 P. 2d 457 (1959)].

To the extent it may be the Goldmans' contention that the tax allocation provisions of Article XIII, §19 and §§ 33950-33954 invade the taxing power of the City as set out in its Charter, it is well-settled in California that the state constitution may impinge upon the taxing power of municipalities contained in their charters [*Ainsworth v. Bryant,* 34 Cal. 2d 465, 469-473, 211 P. 2d 564 (1949); *City of Glendale v. Trondsen,* 48 Cal. 2d 93, 98, 308 P. 2d 1 (1957); *West Coast Advertising Co. v. San Francisco,* 14 Cal. 2d 516, 524, 95 P. 2d 138 (1939); *Cedars of Lebanon Hospital v.*

Los Angeles County, 35 Cal. 2d 729, 221 P. 2d 31 (1950)].

Further, this Court has held that a municipal charter is not a contract within the purview of Article I, §10 of the United States Constitution [*Covington v. Kentucky*, 173 U. S. 231, 241], as has the California Supreme Court [*County of Tulare v. City of Dinuba*, 188 Cal. 664, 669, 206 Pac. 983 (1922)].

It is submitted that the contentions of the Goldmans that Article XIII, §19 of the California Constitution and California Health and Safety Code §§ 33950-33954 violate Article I, §10 of the United States Constitution are wholly without substance.

3. *The Contentions of the Goldmans Respecting 42 U.S.C. §1460 Are Totally Baseless.*

The Goldmans have contended in their Statement of Jurisdiction that the California Supreme Court violated procedural due process under the Fourteenth Amendment to the United States Constitution by determining that:

1. 42 U. S. C. A. §1460(c) did not place a mandatory requirement on the Agency to make a specific finding that the redevelopment of the project area for non-residential uses was necessary to the proper development of the community.

2. The Goldmans had no standing to enjoin the expenditure of federal funds on the ground that the project was not eligible for federal assistance under §1460(c).

3. The Goldmans, had they standing to maintain such a suit, had chosen the wrong forum.

Each of the above contentions is based on the completely erroneous premise, steadfastly adhered to by the Goldmans, that §1460(c) does not permit the redevelopment of a predominantly residential area for predominantly non-residential uses unless the local agency makes a finding that such non-residential use is necessary to the proper development of the community. The project area herein is predominantly residential [C. T. p. 83].

Quite to the contrary, at all times since its enactment, §1460(c) has specifically authorized and now authorizes, the redevelopment of a predominantly residential area (such as the Bunker Hill project area here involved) for whatever uses the local authorities deem most appropriate.

The Housing Act of 1949, as enacted and as amended, of which §1460(c) is a part, has been concerned with the improvement of housing, either by the elimination of slum housing, or the production of good housing. Therefore §1460(c) has always provided, and now provides for full federal financial assistance to redevelopment projects involving either (1) an area predominantly residential to begin with, in which case no limitations are put on re-use, or (2) an area which will be redeveloped for predominantly residential use.

This is quite clear from the statute itself, throughout its various amendments, and from the accompanying legislative history [Act of July 15, 1949, ch. 388, Title I, §110, 63 Stat. 420 (Senate Report No. 84, Feb. 25, 1949, 81st Cong., 1st Sess.); Act of August 2, 1954, ch. 649, Title III, §311, 68 Stat. 626 (Senate Report No. 1472, May 28, 1954, 83rd Cong., 2nd Sess; Con-

ference Report, Statement of the Managers on the Part of the House, U.S. Code Cong. and Adm. News (1954), p. 2841); Act of August 11, 1955 ch. 783, Title I, §106(c), 69 Stat. 637 (House report No. 913, June 25, 1955, 84th Cong., 1st Sess.); Act of August 7, 1956, ch. 1029, Title III, §302(b)-(1), 70 Stat. 1097 (House Report No. 2363, June 15, 1956, 84th Cong., 2nd Sess); Act of September 23, 1959, P.L. 86-372, Title IV, §413, 73 Stat. 675, 677 (Senate Report 924, Sept. 28, 1959, 86th Cong., 1st Sess); Act of June 30, 1961, P.L. 87-60, Title III, §308, 75 Stat. 166, 168, 172 (Senate Report No. 281, 87th Cong., 1st Sess.)].

Attached as Appendix "B" hereto is a complete analysis of §1460(c), its legislative history and its administrative construction excerpted from the Agency's brief before the California appellate courts.

The language upon which the Goldmans rely was added to §1460(c) in order to broaden the authority of the federal administrator to make loans and grants to redevelopment projects involving areas which were predominantly non-residential to begin with, and which were to be redeveloped for predominantly non-residential uses. Previously, the federal administrator was authorized by §1460(c) to extend financial aid to such projects only if the area contained a substantial number of slum dwellings. This latter requirement was deleted in 1959, and in its place was substituted the requirement that a finding be made that redevelopment of the non-residential area for non-residential uses was necessary for the proper development of the community [Senate Report No. 924, Sept. 8, 1959, 86th Cong., 1st Sess. U. S. Code Cong. and Adm. News (1959), at page 2864; see Appendix "B"].

It is readily apparent from a reading of §1460(e), as amended from time to time, that the contentions of the Goldmans that some finding of necessity was necessary to justify the federal administrator in extending federal financial assistance to the redevelopment project involved herein is based simply on a misreading and misinterpretation of that section.

However, even assuming that the Bunker Hill project were not eligible for federal financial assistance the Goldmans would have no standing to enjoin the expenditure of federal funds on the ground that the federal administrator erred in making them available [*Harrison-Halstead Com. Group, Inc. v. H.H.F.A.*, 310 F. 2d 99 (7th Cir. 1962); *Gart v. Cole*, 263 F. 2d 244, 250 (2d Cir. 1959) *cert. den.* 359 U. S. 978; *Pittsburgh Hotels Ass'n, Inc. v. Urban Redevelopment Auth.*, 202 F. Supp. 486, 492-493 (W. D. Pa. 1962), aff'd 309 F. 2d 186 (3rd Cir. 1962); *Kaskel v. Impellitteri*, 121 N. Y. S. 2d 848, 854 (N.Y. Sup. Ct. 1953), aff'd 115 N. E. 2d 659 (N. Y. 1953); see Appendix "B"].

These cases stand upon an obvious rationale: (1) the federal act creates no cause of action in taxpayers or anyone else in this regard; and (2) no taxpayer has a sufficient interest in funds in the federal treasury to create a basis for a taxpayer's action to enjoin the expenditure of such funds [*Frothingham v. Mellon*, 262 U. S. 447, 486; *Alabama Power Co. v. Ickes*, 302 U. S. 464, 478-479].

Furthermore, if the Goldmans had such a cause of action it appears that they chose the wrong forum in which to prosecute it, in that state courts have no jurisdiction over the acts of federal officials acting as such in the administration of federal law [*Tennessee*

Electric Power Co. v. Tennessee Valley Authority, 306 U. S. 118; *Hunter v. City of New York*, 121 N. Y. S. 2d 841, 847-848 (N. Y. Sup. Ct. 1953); see Appendix "B"].

4. *The Goldmans' Contention That the Final Plan Discriminates Between Owner-Participants and Redevelopers in Respect of the Costs of Public Site Improvements in Violation of the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution Is Without Basis.*

The Goldmans contend that the provisions of the Final Plan which require that owner-participants assume financial responsibility for a pro rata share of the costs of site improvements benefiting their property while redevelopers are allegedly exempted from this requirement constitutes a discrimination repugnant to the United States Constitution.

Under the Final Plan, owner-participants are required to assume financial responsibility for their pro rata share of the cost of public site improvements to the extent it results in a net benefit to the re-use value of their land [Agency Ex. 39.6, pp. 82-84; Ex. 39.8, pp. 64-66; Ex. 46.5, p. 12].

Likewise, the Agency is required to sell the land, once cleared and improved, for its fair market value for the re-uses specified in the Final Plan [*In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 43, 37 Cal. Rptr. 74 (1964)].

These requirements involve no exemption and no discrimination. Owner-participants and redevelopers constitute two distinct classes. A person who retains land benefited by public improvements would seem appropriately charged a pro rata amount of the cost to the extent he receives a benefit through enhanced re-use value of his land. Street and sewer assessments are common examples of this type of process.

However, it is not possible to talk in terms of pro rata shares of the costs of improvements when the land is being sold after it is improved. The Agency simply could not sell the land for more than its fair market value, and would be subject to censure if it proposed to sell it for less.

Attached hereto as Appendix "C" is an excerpt from the Agency's brief below, analyzing this question in greater detail.

It is submitted that no discrimination exists in the Final Plan between owner-participants and redevelopers, and that the contention of the Goldmans relating thereto is completely lacking in substance.

Conclusion.

The Goldmans have utterly failed to raise or preserve below five of the six questions they seek to advance here, as to which, therefore, a fatal jurisdictional defect exists.

None of the questions they raise merit review by this Court. They all relate either to narrow questions

involving the particular facts of this case or which are completely foreclosed by prior opinions of this Court.

Additionally, the California Supreme Court obviously decided correctly those issues properly placed before it. The issues the Goldmans seek to raise here are utterly lacking in substance,

It is respectfully submitted that the Agency's Motion to Affirm or Dismiss should be granted.

Respectfully submitted,

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Trial Court [Goldman Joint Pre-Trial Statement, C. T. p. 575, line 26, to p. 576, line 23; and C. T. p. 579, lines 8-20]:

B. Sections 33950 to 33954 of the California Health and Safety Code, which authorize the inclusion in the Final Plan of Sections C.8.d. (1) and (2), providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopmen., are void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area, because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made.

1. Sections C.8.d. (1) and (2) of the Final Plan provide for an illegal appropriation by the City Council of funds belonging to other taxing agencies, in that they provide for such tax allocation without first requiring the City Council to obtain consent to such allocation from such other taxing agencies.

C. The ordinance approving Section C.8.d. (1) of the Final Plan is unconstitutional as applied to the City of Los Angeles, a chartered city, in that it provides for the impairment of the obligations of a contract, to wit, the charter of the City of Los Angeles, in violation of Article I, Section 10 of the Constitution of the United States, by providing for an allocation or relinquishment of future taxes to become due to the City in a manner not authorized by said charter. Such a relinquishment of future taxes can only be accomplished by an amendment to said charter, not by the adoption of an ordinance approving a redevelopment plan.

K. The charter of the City of Los Angeles is a contract protected by Article I, Section 10 of the United States Constitution. Those provisions of Article XIII, Section 19, of the Constitution of the State of California and Sections 33950 and 33954 of the California Health and Safety Code upon which the Final Plan is based, is unconstitutional in violation of Article I, Section 10 of the United States Constitution in that said Article XIII, Section 19 and Sections 33950 and 33954 have each respectively authorized the legislative bodies of municipalities which includes the City of Los Angeles to in effect, impliedly cause an amendment of its charter pertaining to its tax-

APPENDIX "A".

CONTENTIONS OF THE GOLDMANS AS RAISED IN THE CALIFORNIA TRIAL COURT AND APPELLATE COURTS AND IN THEIR STATEMENT OF JURISDICTION.

I.

Contentions Re Tax Allocation.

Calif. Appellate Courts (Goldman Opening Brief, pp. 27, 30, 33, 36, 44 and 46):

II

SECTIONS 33954 OF THE CALIFORNIA HEALTH AND SAFETY CODE, WHICH AUTHORIZE THE INCLUSION IN THE FINAL PLAN OF SECTIONS C.8.d. (1) and (2), PROVIDING FOR THE ALLOCATION OF THE INCREASE OF TAXES ON THE PROPERTY IN THE PROJECT AREA DUE TO THE REDEVELOPMENT THEREOF, TO PAY THE PRINCIPAL AND INTEREST ON BONDS ISSUED BY THE AGENCY TO FINANCE, IN PART, SUCH REDEVELOPMENT, ARE VOID FOR UNCERTAINTY AND CONSTITUTE AN UNLAWFUL DELEGATION OF POWER BELONGING TO OTHER TAXING AGENCIES RECEIVING TAXES FROM THE PROPERTY WITHIN THE PROJECT AREA, BECAUSE SAID SECTIONS DO NOT CLEARLY PROVIDE THAT THE CONSENT OF SUCH OTHER TAXING AGENCIES MUST FIRST BE OBTAINED BEFORE SUCH TAX ALLOCATION MAY BE MADE.

B. THE CALIFORNIA REDEVELOPMENT ACT MAY NOT BE INTERPRETED TO MEAN THAT LEGISLATIVE AUTHORITY HAS BEEN GIVEN TO MUNICIPALITIES TO TAKE AWAY WITHOUT THE CONSENT OF OTHER PUBLIC TAXING AGENCIES TAXES WHICH THEY MAY BE LAWFULLY ENTITLED TO RECEIVE

C. A STATUTE WHICH IS VAGUE AND UNCERTAIN IS INVALID

III

A. THE ORDINANCE APPROVING SECTION C.8.d. (1) OF THE FINAL PLAN IS ULTRA VIRES AS APPLIED TO THE CITY OF LOS ANGELES, A CHARTERED CITY, BY PROVIDING FOR AN ALLOCATION OR RELINQUISHMENT OF FUTURE TAXES TO BECOME DUE TO THE CITY IN A MANNER NOT AUTHORIZED BY SAID CHARTER. SUCH A RELINQUISHMENT OF FUTURE TAXES CAN ONLY BE ACCOMPLISHED BY AN AMENDMENT TO SAID CHARTER, NOT BY THE ADOPTION OF AN ORDINANCE APPROVING A REDEVELOPMENT PLAN

B. THE CHARTER OF THE CITY OF LOS ANGELES CONTAINS A "MUNICIPAL AFFAIRS" PRO-

U. S. Supreme Court (Juris. St., p. 3):

1. Do Article XIII, Section 19, of the California Constitution and Sections 33950 through 33954 of the Health & Safety Code of California violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution?

2. Do the provisions of Article XIII, Section 19, of the California Constitution, and Sections 33950 and 33954 inclusive of the Health & Safety Code violate Article I, Section 10, of the United States Constitution?

III

A. THE ORDINANCE APPROVING SECTION C.8.d. (1) OF THE FINAL PLAN IS ULTRA VIRES AS APPLIED TO THE CITY OF LOS ANGELES, A CHARTERED CITY, BY PROVIDING FOR AN ALLOCATION OR RELINQUISHMENT OF FUTURE TAXES TO BECOME DUE TO THE CITY IN A MANNER NOT AUTHORIZED BY SAID CHARTER. SUCH A RELINQUISHMENT OF FUTURE TAXES CAN ONLY BE ACCOMPLISHED BY AN AMENDMENT TO SAID CHARTER, NOT BY THE ADOPTION OF AN ORDINANCE APPROVING A REDEVELOPMENT PLAN

B. THE CHARTER OF THE CITY OF LOS ANGELES CONTAINS A "MUNICIPAL AFFAIRS" PROVISION GIVNG THE CITY COMPLETE CONTROL OVER ITS MUNICIPAL AFFAIRS

C. THE TAXING POWER OF A CITY IS A MUNCIPAL AFFAIR

[A review of the argument under each of the above headings will reveal that it was made exclusively in terms of California law].

Trial Court [Goldman Joint Pre-Trial Statement, C. T. p. 562, lines 7-14 (statement of issues); C. T. p. 578, lines 10-22 (contentions respecting the issues)]:

H. Is the Final Plan incomplete and void for uncertainty, and does it constitute an unlawful delegation of legislative power by the Agency by failing to provide an ascertainable standard to guide the Agency in determining whether or not a predominantly residential area can be redeveloped for predominantly commercial uses?

I. Does 42 U.S.C.A. Section 1460 authorize the use of Federal funds for the redevelopment of predominantly residential areas for predominantly commercial uses?

H. The Final Plan is incomplete and void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitutes an unlawful delegation of legislative power in that it does not provide an ascertainable standard to enable the Agency to determine whether or not predominantly residential property may be acquired by condemnation for conversion into a predominantly commercial area when said property is suitable for residential use.

1. Under 42 U.S.C.A. Section 1460, Federal funds may not be expended by a municipality or redevelopment agency for the purpose of acquiring by condemnation land which is predominantly residential and converting said land to commercial use when the land is suitable for residential use.

II.

Contentions Re Non-Residential Use and 42 U.S.C.A. Section 1460.

Calif. Appellate Courts (Goldman Opening Brief, pp. 50, 60, 63, 74 and 81):

IV

A. THE REDEVELOPMENT ACT IS INCOMPLETE AND VOID FOR UNCERTAINTY IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND CONSTITUTES AN UNLAWFUL DELEGATION OF LEGISLATIVE POWER, IN THAT IT DOES NOT PROVIDE AN ASCERTAINABLE STANDARD TO ENABLE THE AGENCY TO DETERMINE WHETHER OR NOT PREDOMINANTLY RESIDENTIAL PROPERTY MAY BE ACQUIRED BY CONDEMNATION FOR CONVERSION INTO A PREDOMINANTLY COMMERCIAL AREA WHEN SAID PROPERTY IS SUITABLE FOR A RESIDENTIAL USE

B. THE PRESUMPTION THAT OFFICIAL DUTY WAS COMPLIED WITH IS A REBUTTABLE PRESUMPTION

C. THE SUPREME COURTS OF GEORGIA, FLORIDA AND SOUTH CAROLINA HAVE HELD THAT STATE REDEVELOPMENT STATUTES WHICH AUTHORIZE THE APPROPRIATION OF PREDOMINANTLY RESIDENTIAL LAND INTO PREDOMINANTLY COMMERCIAL AREAS VIOLATE CONSTITUTIONAL PRINCIPLES

V

THE FINDINGS OF A CITY COUNCIL AND REDEVELOPMENT AGENCY APPROVING A REDEVELOPMENT PROJECT ARE SUBJECT TO JUDICIAL REVIEW

VI

COMPLIANCE BY THE LOCAL PUBLIC AGENCY OF ALL STATUTORY DETERMINATIONS AND REQUIREMENTS OF THE FEDERAL URBAN RENEWAL ACT IS A CONDITION PRECEDENT TO THE VALIDITY OF A REDEVELOPMENT PLAN

[A review of the argument in the Goldman Opening Brief with respect to the above headings will reveal that no contention was made that the trial courts' construction of §1460, or the Goldmans' standing to challenge the decision of the federal administrator that the Final Plan Complies therewith, was violative of any rights of the Goldmans under the United States Constitution].

Goldman Petition for Rehearing, p. 2:

6. The Court erred in determining that the Petitioners did not have capacity to question and enforce in a state court the compliance of mandatory conditions precedent imposed upon

U. S. Supreme Court (Juris. St. pp. 3-4):

3. Did the Supreme Court of California violate procedural due process of law as required by the 14th Amendment of the United States Constitution in determining that the petitioners herein did not have capacity to question and enforce in a State Court the compliance of mandatory conditions precedent imposed upon the Community Re-Development Agency by Section 1460(c) of the Housing Act of 1949, as amended?

4. Did the Supreme Court of California violate procedural due process of law as required by the 14th Amendment of the United States Constitution in determining that a Municipal Taxpayer and Property Owner directly affected may not question in a State Court, under a State Statute (Section 33746 Health & Safety Code) the legal authority of a municipality and/or of a redevelopment agency to use federal funds to illegally acquire by eminent domain land situated in an area to be developed under the provisions of the Housing Act of 1949 and the Redevelopment Act of California?

5. Did the Supreme Court of California violate procedural due process of law in violation of the 14th Amendment of the United States Constitution in determining that Section 1460(c) of the Housing Act of 1949, as amended, was not a mandatory condition precedent imposed upon the redevelopment agency of the City of Los Angeles, and the City of Los Angeles, respectively?

Trial Court [Goldmans Joint Pre-Trial Statement, C. T. p. 576, line 24, to p. 578, line 9]:

D. The Community Redevelopment Law of the State of California (Section 33000 *et seq.* of the California Health and Safety Code) is void for uncertainty in violation of the due process clause of the Fourteenth Amendment in that it has failed to provide clearly an ascertainable guide to enable local legislative bodies to determine what covenants, conditions and restrictions may lawfully be included in a redevelopment plan, especially in regard to the manner or method of the assessment by the local legislative body of the cost of the public site improvements to be made in the Project Area.

E. The Final Plan is void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitutes an illegal delegation of power by the City Council in that the Final Plan fails to provide clearly for the method and manner of the assessment of the cost of the removal of the existing public site improvements in the Project Area, and does not state whether or not the assessment for the cost of the installation of new public site improvements in the Project Area shall be carried out in the manner required by the charter of the City of Los Angeles.

F. The Final Plan is incomplete, void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitutes an unlawful delegation of legislative and judicial power by the City Council in that said Plan contains no provisions for the method and manner in which the cost of demolition and removal of existing structures and/or removal of existing public site improvements (which are paid for by the Agency) are to be repaid by the owners of the land who agree to participate, or by the redevelopers who purchase said land from the Agency.

G. The Final Plan, in providing that the cleared land in the Project Area shall be sold or leased for its "fair value for uses in accord with the Plan," is void for uncertainty in violation of the due process clause of the Fourteenth Amendment in that it does not provide an ascertainable standard to guide the Agency in determining whether, in arriving at what constitutes such fair value, it must include the acquisition price of land, the cost of demolition and clearance of the land, the cost of demolition and clearance of existing public site improvements, and the cost of the installation of new public site improvements. The Agency's interpretation of "fair value" violates Article I, Section 2 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States in that such interpretation does not have a uniform application. Such interpretation also constitutes the granting of special privileges or immunities to an arbitrary class of persons, to wit: the developers contrary to the provisions of Article I, Section 21 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States.

III.

Contentions Re Cost of Site Improvements and/or Owner Participation.

Calif. Appellate Courts (Goldman Opening Brief, pp. 95, 114 and 125):

VIII

THE GOLDMANS AS THE OWNERS OF PROPERTY WITHIN THE PROJECT AND AS TAXPAYERS RESPECTIVELY DIRECTLY AFFECTED BY THE ADOPTION OF THE REDEVELOPMENT PLAN HAVE CAPACITY TO TEST THE VALIDITY OF THE ORDINANCE AND THE CONSTITUTIONALITY OF THE CALIFORNIA REDEVELOPMENT ACT

A. THE PROVISIONS OF THE REDEVELOPMENT PLAN WHICH REQUIRE AN OWNER WHO AGREES TO PARTICIPATE IN THE REDEVELOPMENT PROJECT TO ASSUME FINANCIAL RESPONSIBILITY FOR HIS PRO RATA SHARE OF THE COSTS OF THE NECESSARY PUBLIC SITE IMPROVEMENTS WHILE AT THE SAME TIME EXEMPTING THE REDEVELOPERS FROM A SIMILAR FINANCIAL RESPONSIBILITY VIOLATES THE EQUAL PROTECTION PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

B. OWNER PARTICIPANTS ARE IN THE SAME CLASS AS REDEVELOPERS

U. S. Supreme Court (Juris. St. p. 4):

6. Does the ordinance approving the re-development plan violate the equal protection clause of the 14th amendment of the United States Constitution, in imposing upon a participating owner the assumption of his pro rata share of public site improvements, whereas redevelopers are exempted from a similar financial responsibility?

APPENDIX "B".

EXCERPT FROM THE AGENCY'S BRIEF BELOW, RELATING TO 42 U.S.C.A. SECTION 1460.

E. A Redevelopment Plan Providing for the Redevelopment of a Predominantly Residential Area for Predominantly Non-Residential Uses (Such as the Final Plan Herein) Is Eligible for Full Federal Financial Assistance.

The Goldmans' brief, in section IV, at page 52, through Section VI, page 88, sets forth the contention that the Final Plan is ineligible for federal financial assistance under the Housing Act of 1949, as amended (42 U.S.C.A., Sections 1441, *et seq.*).

In essence, this contention is that federal funds cannot be made available to aid in the financing of the project because 42 U.S.C.A. Section 1460(c) required, at the time of the approval of the Final Plan by the federal administrator and by the City Council, that where a predominantly residential area is to be redeveloped for predominantly non-residential use, federal funds could be made available only if the City Council made an express finding that such non-residential use is necessary to the proper development of the community. It is contended that such finding was not made. This contention appears to be based on a misinterpretation and misreading of the 1959 amendment to Section 1460(c).

Preliminarily, it should be noted that the Project Area was and is a predominantly residential area. This was admitted by the Goldmans in their Joint Pre-Trial Statement below [Clk. Tr. p. 560], and the trial court so found [Clk. Tr. p. 83, lines 2 and 3]. The Final

Plan was approved for federal financial assistance by the federal administrator prior to April 30, 1958 [Agency Ex. 47; Clk. Tr. p. 560]. The City Council adopted the Final Plan on March 31, 1959 [Clk. Tr. p. 92]. The Agency's Loan and Grant Contract with the HHFA became effective on December 2, 1959 [Agency Ex. 46, letter from the Urban Renewal Administration to the Agency].

Section 1460(c) has been amended a number of times between 1949 and the present. However, insofar as the Goldmans' contentions are concerned, it makes no difference which version of the section is applicable to the Final Plan, because the Final Plan qualifies for full federal financial assistance under the section as initially drafted, as it presently exists, and in all of its permutations in between.

Section 1460(c) has at all times since its inception specifically authorized, and now authorizes, full federal financial assistance to projects, such as the instant project, providing for the redevelopment of predominantly residential areas for predominantly non-residential uses, without the necessity of any finding as to the necessity of such non-residential uses to the proper development of the community. This is clearly shown by the legislative history of the section.

The Legislative History of Section 1460(c).

Section 1460, which is entitled "definitions", by defining terms used in preceding sections, especially sections 1452, 1453 and 1455, sets out criteria for project eligibility for federal financial assistance under the Housing Act of 1949, as amended.

As originally enacted by Act of July 15, 1949, ch. 388, Title I, Section 110, 63 Stat. 420, Section 1460(c) read in part as follows:

> "(c) 'Project' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses . . ."

Senate Report No. 84, February 25, 1949, 81st Cong., 1st Sess., U. S. Code Cong. Service (1949) at page 1563 states:

> "TYPES OF PROJECTS COVERED
>
> "The pending bill limits Federal financial assistance to the assembly and clearance of areas which either are predominantly residential or which will be redeveloped primarily for residential use. This limitation is fully justified in view of the fact that the primary purpose of Federal aid in this field is to help remove the impact of the slums on human lives rather than simply to assist in the redevelopment or rebuilding of cities.
>
> "At the same time this requirement will not interfere with the carrying out of effective local programs which will combine the clearance of slums with sound local plans for the development and redevelopment of communities. *Most slums and blighted areas are predominantly residential in character and, in these cases, the bill would permit their redevelopment for whatever new uses are considered most appropriate by the locality. . . .*" (Emphasis added).

The Report further states, in Section XI thereof, quoting the recommendations of the Senate subcommittee on housing and urban redevelopment, at page 1582:

> "'The subcommittee is not convinced that the Federal Government should embark upon a general program of aid to cities looking to their rebuilding in more attractive and economical patterns. It does suggest, however, that because of the accepted national interest in housing conditions, the Federal Government should provide aid where the area in question is to be redeveloped primarily for residential use or where the area is now predominantly residential in character and the clearance of the area would in itself serve a public purpose through the removal of unsafe and unsanitary dwelling structures. *In the latter case, aid should not be conditioned on the reuse of the area for housing purposes but should be available for whatever use the cities, through official planning agencies, should determine to be appropriate.*" (Emphasis added).

It is quite clear from these reports that the Housing Act of 1949, as originally enacted, was primarily concerned with improving housing conditions. It is also clear that the Act sought to accomplish this improvement by either (1) assisting projects which would accomplish the elimination of slums in predominantly residential areas, or (2) assisting projects which would increase the amount of decent housing facilities by redeveloping blighted areas for predominantly residential uses.

Since one of the purposes of the Act, that of slum clearance, would be accomplished by the mere elimination of blighted predominantly residential areas, the Act

imposed no restrictions on the reuses to which such areas might be put under the urban renewal plans therefor. Since the Project Area is predominantly residential, the Final Plan obviously qualifies for federal financial assistance under Section 1460(c), as originally enacted.

Where the redevelopment of blighted, predominantly non-residential areas was concerned, the purpose of bettering housing conditions could only be met if the areas were redeveloped for residential uses. Therefore, the Act, through Section 1460(c), imposed the requirement that federal financial assistance could only be extended to projects covering predominantly non-residential areas if such areas were to be redeveloped for predominantly residential uses.

This general format has been retained in the Act to this date. The subsequent changes set out below merely made exceptions to the "predominantly residential" requirement, broadening the authority of the federal administrator to extend loans and grants to projects involving the redevelopment of non-residential areas for non-residential uses.

As originally enacted Title I of the Housing Act of 1949 provided for federal financial assistance only to redevelopment projects. In 1954 Title I was expanded to include the conservation of deteriorating areas as well as the redevelopment thereof. As part of this change Section 1460(c) was amended by Act of August 2, 1954, ch. 649, Title III, Section 311, 68 Stat. 626, to read in part as follows:

> "(c) . . . *And provided further,* That financial assistance shall not be extended under this title for any project involving slum clearance and

redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses . . . ."

Senate Report No. 1472, May 28, 1954, 83rd Cong., 2nd Sess., U. S. Code Cong. and Adm. News (1954), at page 2760, states:

"Your committee desires to emphasize again that Title I of the Housing Act of 1949 is directed not merely at the elimination and redevelopment of unsightly slums and blighted areas—its primary and principal objective is the improvement of the housing conditions of American families. It seeks the accomplishment of that basic objective in two ways —the elimination of slums and other inadequate housing, and an increase in the supply of good housing. To be eligible for financial assistance, therefor, the original provisions of title I required that a project must result either in the elimination of slum housing or in the production of good housing in a well-planned residential neighborhood. Thus, under the provisions of existing law, financial assistance may be made available for clearing a slum area, or a blighted residential area, whether it is to be redeveloped for either residential use, or commercial or industrial use, or a combination of such uses. However, if the area is not presently predominantly residential in character, financial assistance may be made available only if the area is to be redeveloped for predominantly residential uses.

"The bill as passed by the House deleted these existing provisions of law and substituted pro-

visions which would have established as the general criteria of eligibility the achievement of 'sound community objectives for the establishment and preservation of well-planned residential neighborhoods.' Your committee felt that such general criteria were too vague and could be construed in such a way as to permit a major change in the basic objective of the existing law. Accordingly, your committee substituted a provision (included in sec. 311 of the bill) designed to retain essentially the same provision of existing law in this respect and thus assure that the principal and primary purpose of the existing law would be retained. The provision substituted by your committee requires that no assistance may be made available for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such area is to be redeveloped for predominantly residential uses, . . ."

The Conference Report, Statement of the Managers on the Part of the House, U. S. Code Cong. and Adm. News (1954), at page 2841, states:

"The House bill changed the requirements established for a project in existing law and substituted provisions establishing as the general criteria of eligibility for an urban renewal project the achievement of 'sound community objectives for the establishment and preservation of well-planned residential neighborhoods.' *Under existing law loans and capital grants may be made available for clearing a slum or blighted residential area, whether it is to be redeveloped for residential use or for commercial or industrial use or for a combination of such*

uses; but if the area is not already predominantly residential in character, such financial assistance may be made available only if it is to be redeveloped for predominantly residential uses. *The Senate amendment deleted the House provisions and reinstated existing law* by prohibiting loans and capital grants for projects involving slum clearance and redevelopment of areas not clearly predominantly residential in character unless such redevelopment is for predominantly residential uses; . . ."

". . . The conference substitute retains the Senate amendment." (Emphasis added).

These reports clearly indicate that the 1954 amendment to Section 1460(c) was intended to retain the same basic criteria for project eligibility for federal financial assistance established by the original Act, *i.e.*, that the area either be clearly predominantly residential to begin with, or be redeveloped for predominantly residential uses.

In 1955, Section 1460(c) was amended by Act of August 11, 1955, ch. 783, Title I, Section 106(c), 69 Stat. 637, to authorize loans to projects providing for the redevelopment of open land or predominantly open areas for non-residential uses. House Report No. 913, June 25, 1955, 84th Cong., 1st Sess., U. S. Code Cong. and Adm. News (1955), at page 2922, states, with respect to the purpose of the amendment:

"The bill as amended by your committee would authorize loans and advances . . . to assist in the redevelopment of either predominantly open land or open land for industrial or other non-residential uses. . . .

". . .

". . . Under the present law, land which is not predominantly residential in character cannot (except in certain limited cases) be developed for industrial or other nonresidential uses."

It is quite apparent from this report that the 1955 amendment was designed to expand the types of areas which might, consonant with receiving federal assistance, be redeveloped for non-residential uses to include not only areas which were predominantly residential to begin with and areas not predominantly residential but containing a substantial number of slum dwellings, the elimination of which would further the purposes of the Act, but also predominantly open or open land areas, subject to certain limitations imposed by the amendment.

Section 1460(c) was again amended in 1956, by Act of August 7, 1956, ch. 1029, Title III, Section 302(b)-(1), 70 Stat. 1097. This amendment was part of a simplification of the Housing Act of 1949. After the 1954 expansion of Title I to include rehabilitation and conservation projects in addition to redevelopment projects, the Act required both an urban renewal plan for the overall area and a separate redevelopment plan for any part of a renewal area to be cleared of slums or redeveloped. The 1956 amendments consolidated the provisions as to rehabilitation, conservation and redevelopment, and deleted the requirement of a separate redevelopment plan in addition to an urban renewal plan.

This is set forth in House Report No. 2363, June 15, 1956, 84th Cong., 2nd Sess., U. S. Code Cong. and Adm. News (1956), at page 4536:

"When the title I program was broadened in the Housing Act of 1954 to cover rehabilitation and

conservation as well as slum clearance and redevelopment it was provided that for any part of an urban renewal area that was to be cleared of slums or redeveloped there would also have to be a redevelopment plan approved by the governing body of the locality. Since the prescribed contents of an urban renewal plan include the items that would appropriately be included in a redevelopment plan and since approval of the local governing body is required for an urban renewal plan it would appear that the requirements with respect to a separate redevelopment plan only increase paper work and serve no useful purpose. Accordingly the bill would amend sections 105 and 110 of title I of the act so as to remove the provisions relating to redevelopment plan requirements."

Under the 1954 version of Section 1460(c), the requirement that an area either be clearly predominantly residential to begin with or be projected for predominantly residential uses under the plan therefor applied only to projects involving slum clearance and redevelopment. The 1956 amendment merely made this requirement applicable to all urban renewal projects, in keeping with the consolidation of the provisions of the Act relating to rehabilitation, conservation and redevelopment under the general heading of "urban renewal". No change in the nature of the requirement was made. The same requirement was simply made applicable to a broader category of projects.

Since the basic nature of the limitations set forth in Section 1460(c) did not change between the 1954 and 1956 versions, but only the type of projects to which those limitations applied, it is submitted that the com-

mittee reports relating to Section 1460(c) which accompanied the 1949 and 1954 versions are fully applicable to the 1956 version insofar as the requirements as to existing use and projected re-use are concerned.

Section 1460(c) was further amended by Act of September 23, 1959, P. L. 86-372, Title IV, Section 413, 73 Stat. 675, 677, to read in part as follows:

> "Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: . . ."

This language upon which the Goldmans rely, and which they have misconstrued continued the prior law as to areas which were predominantly residential before redevelopment, or which were to be redeveloped for residential uses. It did not deal at all with such areas. It simply said that if an area were not predominantly residential and was not to be redeveloped for predominantly residential use, federal financial assistance could only be granted if the governing body of the local public agency found that such non-residential use was necessary to the proper development of the community. This amendment effected a broadening of the federal administrator's authority to extend assistance to projects providing for the redevelopment of non-residential areas for non-residential uses by deleting the requirement that such an

area contain a substantial number of slum dwellings, and substituted the requirement of a finding of necessity. This is substantiated by Senate Report No. 924, September 8, 1959, 86th Cong., 1st Sess., U. S. Code Cong. and Adm. News (1959), at page 2864:

> "Section 413 — Amends section 110(c) of the Housing Act of 1949 [42 U.S.C.A. Section 1460(c)] to permit up to 20 percent of the future capital grant authorization to be used for areas which are not predominantly residential, and which are not to be redeveloped for predominantly residential uses, even if such areas do not include a substantial number of slum dwellings as presently required."

The latest amendment to Section 1460(c) was made in 1961, by Act of June 30, 1961, P.L. 87-60, Title III, Section 308, 75 Stat. 166, 168, 172, to increase the percentage of future capital grant authorizations to be used for areas not predominantly residential, and which are not to be redeveloped for predominantly residential uses, from 20% to 30%.

The Senate report which accompanied this amendment is particularly instructive in setting out that the federal act, in its present form, still requires that a project area either be predominantly residential before redevelopment, or predominantly residential after redevelopment, with exceptions for certain projects where non-residential areas are to be redeveloped for non-residential uses. Senate Report No. 281, U. S. Code Cong. and Adm. News, 87th Cong., 1st Sess. (1961), at page 1952, states:

> "Section 309 would permit 30 percent instead of 20 percent of urban renewal grant authority to be

used for the renewal of areas not filling the predominantly residential requirement of the law.

"Urban renewal project areas presently are required to be 'predominantly residential' in character either before or after renewal, except that 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement. . . ."

It is quite clear from this legislative history that the Housing Act of 1949, as originally enacted, and as amended to date, has always authorized and still authorizes full federal financial assistance to redevelopment projects which either (1) are predominantly residential prior to redevelopment, or (2) will be predominantly residential after redevelopment.

As to project areas predominantly residential to begin with, such as the Project Area herein, the federal act has never placed any restriction on the type of uses to be made of the area after redevelopment. It is very apparent that the Goldmans' contentions as to Section 1460(c) are based on an entirely erroneous interpretation of the 1959 amendment thereto.

The Administrative Construction of Section 1460(c).

The HHFA, which is delegated the primary responsibility for administering the Housing Act of 1949, as amended (see *e.g.*, 20 U.S.C.A., Section 1441), has consistently interpreted Section 1460(c) as above set forth. A number of reported cases disclose that federal financial assistance has been extended to redevelopment projects which redeveloped residential areas for non-residential use. Among them are *Foeller v. Housing Authority of Portland*, 256 P. 2d 752 (Ore. 1952) [predomi-

nantly residential area. The court assumed a redevelopment plan calling for industrial use only]; *Gohld Realty Co. v. City of Hartford,* 104 A. 2d 365 (Conn. 1952) [residential area, with intermixed commercial and light industrial uses, planned for retail and wholesale business uses]; *Crommett v. City of Portland,* 107 A. 2d 841 (Maine 1954) [predominantly residential area, planned for commercial, industrial, "and other" uses]; *Housing Redevelopment Authority of Minneapolis v. Minneapolis Metropolitan Company,* 104 N. W. 2d 864 (Minn. 1960) [area consisting largely of rooming houses and establishments "serving the needs and demands of transients", to be redeveloped for commercial and light industrial uses].

While it is true that administrative interpretation or practice is not conclusive as to the construction of a statute, still it "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Products Co. v. United States,* 288 U. S. 294 (1933); *Fawcus Machinery Co. v. United States,* 282 U. S. 375 (1931).

The Project Area is a predominantly residential area. The Goldmans contend that under the provisions of Section 1460(c) applicable to the Final Plan such an area must be redeveloped for predominantly residential use, unless the City Council made an express finding that redevelopment of the area for non-residential uses was necessary to the proper development of the community. Since such a finding was not explicitly made, the Goldmans contend that the Final Plan did not and does not qualify for federal financial assistance.

The language of the section, the legislative history thereof, and the administrative interpretation of and practice under the section all clearly indicate that where an area is predominantly residential to begin with, as in the instant case, it may receive full federal financial assistance irrespective of the uses to be made of the area under the urban renewal plan therefor.

The Goldmans' contention appears to be based on the entirely erroneous assumption that federal assistance may be extended only to projects providing for residential development. It also appears to be based in part on a misinterpretation of the language of the 1959 amendment to Section 1460(c), above set forth. The finding as to the necessity of non-residential redevelopment, the absence of which the Goldmans contend is fatal herein, made a requirement by the 1959 amendment to Section 1460(c), is only required in the case of projects providing for the redevelopment of predominantly non-residential areas for predominantly non-residential uses. Since the Project Area herein was and is clearly predominantly residential, and assuming that the 1959 amendment is applicable to the Final Plan, such a finding would not have been required.

It is submitted that the Goldmans' contentions with respect to the eligibility of the Final Plan for federal financial assistance are nothing more than the product of the misreading of Section 1460(c) and are wholly without substance.

F. Assuming, Arguendo, That the Final Plan Does Not Qualify for Federal Financial Assistance, the Goldmans Have No Standing to Challenge the Action of the Federal Administrator in Extending Such Assistance Thereto. Additionally, Had the Goldmans Such Standing, They Have Chosen the Wrong Forum.

Sections VII and VIII of the Goldmans' brief, at pages 88 through 114, contain a lengthy exposition in which it is contended that the Goldmans, as taxpayers, may properly raise and litigate the questions of whether or not the Final Plan qualifies for federal financial assistance under federal law, including the question of whether or not the City Council made the finding which the Goldmans erroneously contend was required by federal law as a condition precedent to such aid.

By way of background, the federal administrator approved the Final Plan for a federal loan and capital grant [Agency Ex. 39.2, p. 6, line 24, to p. 7, line 1, Agency Ex. 47], and subsequently executed a contract with the Agency providing therefor [Clk. Tr. p. 560; Agency Ex. 46]. The Goldmans, in their First Amended Complaint herein, have sought to enjoin the expenditure by the Agency of any funds acquired from the United States Government under the Housing Act of 1949, as amended [Clk. Tr. p. 113].

A case directly in point against the Goldmans is *Kaskel v. Impellitteri*, 121 N. Y. S. 2d 848 (N. Y. Sup. Ct. 1953) [aff'd 115 N. E. 2d 659 (N.Y. 1853)]. In that case, plaintiff taxpayer sought to enjoin the expenditure of city and federal funds by the redeveloping authority, on the ground that the redevelopment plan

did not qualify for federal assistance under 42 U.S.C.A. Section 1460(c). The Court stated, at page 854:

> "Plaintiff contends, next, that the redevelopment plan violates the provisions of the National [sic] Housing Act of 1949 which, it is submitted, is intended for the protection of the taxpayers and residents of the city, in that it does not provide for redevelopment for predominantly residential uses and is therefore, illegal, and that the city should, in consequence, be enjoined from expending funds allocated to the city under it.
>
> "If the city is improperly spending or contemplates spending funds contributed toward the project by the National [sic] Housing and Home Finance Agency, it is a matter for the consideration and concern of the federal administrator and not for the plaintiff and, on this feature, the court is of the view that the plaintiff is without legal capacity to sue. *Hunter v. City of New York,* Sup. 121 N.Y.S. 2d 841. . . ."

Three recent federal decisions have also held that the plaintiffs therein had no standing to litigate questions under the Housing Act of 1949, as amended.

In *Gart v. Cole,* 263 F. 2d 244 (2d Cir. 1959) [*cert. den.* 359 U. S. 978], certain property owners in a redevelopment project area, as individuals and in representative capacity, sued the Federal Administrator of the H. H. F. A. to enjoin the execution of the redevelopment plan involved. Among their contentions was a claim that certain sponsorship agreements executed by the city violated specified provisions of the Housing Act of 1949, as amended.

The court held that plaintiffs had no standing to contest the validity of the agreements, stating at page 250:

"Appellants clearly have no standing to assert that the City's sponsorship agreements violate the Housing Act's alleged requirements of open bidding on all property sold as part of the Project. Assuming that such a requirement may be read into 42 U.S.C. Sections 1456(c) (7) and 1460(c) (4), these sections seen designed to protect not the interests of landowners or tenants in a redevelopment area, but those of the public at large. Appellants cannot challenge this expenditure of funds as representatives of so broad an interest. Commonwealth of Massachussetts v. Mellon, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078. See also Allied-City Wide, Inc. v. Cole, 97 U.S. App.D.C. 277, 230 F. 2d 827."

In *Pittsburgh Hotels Ass'n, Inc. v. Urban Redevelopment Auth.*, 202 F. Supp. 486 (W.D. Pa. 1962), aff'd 309 F. 2d 186 (3rd Cir. 1962), plaintiffs sought to enjoin the execution of so much of a redevelopment project as provided for the construction of a hotel. The court held that the plaintiffs had no standing to maintain their attack, stating at pages 492-493:

"Moreover, the Housing Acts were not passed for the benefit of hotels, and if the 1959 Amendment is correctly construed to be prospective, plaintiffs have no standing to maintain this legal attack upon the 1955 Plan and its provision permitting the construction of a hotel. If plaintiffs and their employees will be financially injured, as they allege, by the prospective lawful competition, such injuries are damnum absque injuria. Ala-

bama Power Co. v. Ickes, 302 U.S. 464, 58 S.Ct. 300, 82 L.Ed. 374 (1938); Taft Hotel Corporation v. Housing & Home Finance, 162 F.Supp. 538, 539-540 (D.Conn. 1958), aff'd 262 F.2d 307, 308 (2d Cir. 1958); Gart v. Cole, 166 F.Supp. 129 (S.D.N.Y. 1958), aff'd 263 F.2d 244 (2d Cir. 1959)."

Accord: *Harrison-Halstead Com. Group Inc. v. H.H.F.A.*, 310 F. 2d 99 (7th Cir. 1962).

These are square holdings by the courts that a taxpayer has no capacity to sue to enjoin the expenditure of funds made available to a redevelopment project by the federal authorities under the Housing Act of 1949, on the ground that the project is not qualified to receive such federal aid. The obvious rationale of the holdings are twofold: (1) the Federal act does not create any cause of action in taxpayers or anyone else in this regard; and (2) no taxpayer has a sufficient interest in the funds in the federal treasury to create a basis for a taxpayer's action to enjoin the expenditure of such funds. *Frothingham v. Mellon*, 262 U. S. 447 (1923); *Alabama Power Co. v. Ickes*, 302 U. S. 464 (1938).

Furthermore, if such a cause of action did exist in favor of the Goldmans, it appears that they have chosen the wrong forum in which to prosecute it. In *Hunter v. City of New York*, 121 N. Y. S. 2d 841 (N. Y. Sup. Ct., 1953), the plaintiffs sought to have certain contracts declared invalid, including a contract entered into between the redevelopment authority and the federal government under the Housing Act of 1949, on the ground that the redevelopment plan failed to comply with the federal law as to the relocation of tenants displaced from the project area. The New York court

dismissed the complaint. After finding that the plaintiffs lacked legal capacity to sue, the court stated at pages 847-848:

> "Assuming, arguendo, plaintiffs have legal capacity to sue under the Act and may maintain the action at bar, nevertheless the complaint must be dismissed for the reason that neither this court not any other state court is the proper form for such suit; state courts have no jurisdiction over the acts of federal officials acting as such in the administration of the federal laws or as agencies of the federal government. *Perkins v. Lukens Steel Co., supra; Tennessee Electric Power Co. v. Tennessee Valley Authority*, 306 U.S. 118, 59 S.Ct. 366, 38 L.Ed. 543; *Mount Hope Development Corp. v. James*, 258 N.Y. 510, 180 N.E. 252. . . ."

The *Hunter* case indicates that no state court has jurisdiction to review the findings of the federal administrator in determining that a redevelopment plan qualifies for federal assistance. Such a review would be necessarily involved in an action such as the Goldmans to enjoin the Agency from expending, in furtherance of the Final Plan, funds made available by the federal government, on the ground that the Final Plan is not qualified under federal law to receive such federal assistance.

To overcome the foregoing authority, the Goldmans appear to rely primarily upon the case of *Shipley v. Smith*, 107 P. 2d 1050 (N. M. 1940) set out at pages 25 to 27 of their brief. In that case a county resident brought a taxpayer's action to enjoin the expenditure of funds under an illegal contract. The contract involved the purchase of certain machinery at a cost in excess of $500.00. State law required that any county

making such a purchase advertise for bids and buy from the lowest responsible bidder. This procedure had not been followed by the county, hence the suit.

The court held that the plaintiff had standing to maintain the suit, even though the money to be expended came from the federal government, rather than from local taxation. This case merely stands for the proposition that a local taxpayer may compel a municipality to follow local statutory requirements involving the expenditure of money, regardless of the source of the funds to be expended. It does not stand for the proposition that a taxpayer has standing to litigate the question of whether or not a federal administrator was right or wrong in determining that a redevelopment plan qualifies under federal law for a federal grant, by seeking to enjoin the expenditure of the funds by the Agency on the ground that they were improperly made available.

In order for the *Shipley* case to be at all applicable, it would have had to be a suit to enjoin the expenditure on the ground that the federal funds had been improperly granted to the county. This obviously was not the situation before the court in *Shipley,* but it is precisely the question which was before the court in both the *Kaskel* and *Hunter* cases, and at least collaterally involved in the *Gart, Pittsburgh* and *Harrison-Halstead* cases, in all of which the court held the taxpayer to be without standing to maintain the action.

It is submitted that the Goldmans not only lack capacity to raise the contentions in question, and therefore failed to state a cause of action existing in their favor, but if they had such a cause of action, it is highly doubtful that any state court would have jurisdiction over the subject matter thereof.

APPENDIX "C".

EXCERPT FROM THE AGENCY'S BRIEF BELOW, RELATING TO ALLEGED DISCRIMINATION BETWEEN OWNER-PARTICIPANTS AND RE-DEVELOPERS.

5. The Goldmans' Contention Is Without Merit in That the Final Plan Provisions Relating to Owner Participation Do Not Illegally Discriminate Between Owner-Participants and Redevelopers.

As noted above, the Goldmans contend that the owner participation provisions of the Final Plan unconstitutionally discriminate between owner-participants and redevelopers in that owner-participants are required to assume financial responsibility for a pro rata share of the cost of site improvements benefiting their property while redevelopers are allegedly exempted from this requirement. This contention is completely untenable.

Counsel for the Goldmans extensively questioned Mr. Bill, the Executive Director of the Agency on this aspect of the Final Plan [Agency Ex. 39.6, p. 80, line 5, to p. 84, line 18].

The following exchange is particularly instructive [Agency Ex. 39.6, p. 82, line 17, to p. 83, line 4]:

> "Mr. Silver: Has your Agency as yet determined what the total cost of the site improvement will amount to in the Project?
>
> "Mr. Bill: In the terms of this discussion, and the use of words previously qualified as a definition of site improvement, it will be in the neighborhood of $7½ million—
>
> "Mr. Silver: What percentage will the owner be required to pay as his share of the total cost of

the site improvement, if he is allowed to retain title to his land?

"Mr. Bill: The methods that will be utilized there can't give it in a percentage as such. The site improvement cost will be prorated on the basis of net benefits to his property as reflected in the re-use land value. The proportional net figure based on benefits."

Mr. Bill further testified [Agency, Ex. 39.6, p. 84, lines 7-13] that this pro rata charge had to be made on an equitable basis, and could not be done on a square foot basis.

Mr. Sesnon was also extensively examined by counsel for the Goldmans at the public hearing before the City Council. The following bears particularly on the point here considered [Agency Ex. 39.8, p. 64, line 22, to p. 66, line 16]:

"Mr. Silver: Is it not provided in the Plan that the owner who desires to participate must agree to assume their pro rata share of the cost of these site improvements?

"Mr. Sesnon: Under certain circumstances and conditions as related to their benefits to their own property in that form.

"Mr. Silver: And in this assumption of liability for the necessary site improvements, does it also include the demolition of their structures?

"Mr. Sesnon: Yes, they demolish their own structures, that is correct.

"Mr. Silver: When an owner residing in the area desires to participate in another building, then he would likewise be required to assume his pro-rata share of the demolition of the structure?

"Mr. Sesnon: No, no, if this owner-participant requires additional property from the Agency—

"Mr. Silver: No, if he participates with another owner in a large project, that he would be required to assume his pro rata share of the cost of demolition, if that structure is demolished?

"Mr. Sesnon: Not he alone. If a group came in—

"Mr. Silver: The group alone?

"Mr. Sesnon: The group would have to demolish their own building and their own property.

"Mr. Silver: Is it not true also that if an owner desires additional land from the Agency, in order to qualify for the type of structure the Agency has imposed, that he would likewise be required to agree to assume liability for the cost of the necessary demolition that had taken place in the other land?

"Mr. Sesnon: No.

"Mr. Silver: Would he not be required to assume his liability as to the cost of removal of the site improvements that had taken place from this other land?

"Mr. Sesnon: No.

"Mr. Silver: Would he not be required to pay his pro rata share for the cost of the new site improvements on this particular addition of land?

"Mr. Sesnon: On the newly acquired land, let us understand this carefully as I am sure that this is significant to the Members of the Council, my answer to this question is primarily directed at land that the said owner-participant group, and an owner-participant would be acquiring from the Redevelopment Agency, and in answer to would they

be required to pay a pro rata share of that, the answer is no."

Further [Agency Ex. 39.8, p. 82, lines 13-24]:

"Mr. Silver: Isn't it a fact, Mr. Sesnon, that there is no intention in this Plan to compel the redevelopers to assume any liability as to the cost of site improvements that will be assessed against the land on Bunker Hill?

"Mr. Corman: Same objection.

"Mr. Sesnon: This is already in the record, the site improvement costs will be pro rated, and the owner-participant pays for the net benefits to his property as reflected in the re-use land values. To further emphasize this, it will put the owner-participant on an equal basis with the redevelopers who will pay a rate on the re-use sale value which includes those benefits."

At the trial below, Mr. Bill was questioned in this area by counsel for Trautwein, as follows [R. Tr. p. 780, line 26, to p. 781, line 9]:

"Q. By Mr. Norris: Do you know what portion or what charges would have been made for site development had I been able to participate on the property I owned? A. At that time I did not, nor do I now.

Do you want me to elaborate a bit on that, or just a yes or no?

In other words, we have, I believe, nine owner-participation agreements executed, and there is a dollar amount in each one of those, and each one took study in order to determine it."

Owner-participants acquiring additional land, and redevelopers are in exactly the same position in acquir-

ing land from the Agency. *Neither category is exempted from paying for the site improvements.* In each case, the Agency is required to sell the land at its fair market value for the uses to which it is to be put under the Final Plan [Agency Ex. 46.5, p. 12]. Both the owner-participant buying additional land and the redevelopers, in paying fair market value for the land, in its improved state, obviously will be paying a price which reflects the value of the site improvements insofar as they benefit the particular parcels being purchased. This is comparable to the pro rata share of the cost of the site improvements which must be assumed by the owner-participants.

The Goldmans' contention regarding the cost of site improvements is clearly insupportable. It misunderstands the nature of real property transactions. The fact that owner-participants purchasing additional land and redevelopers do not directly pay a pro rata share of the cost of site improvements benefiting the land they purchase is not because they are being relieved of a responsibility. It is because pro rata costs are not appropriate in selling property, while they are appropriate when dealing with retained property, which will not be publicly owned when the site improvements are made. Owner-participants are required to assume financial responsibility for a pro rata share of the cost of site improvements which benefit their existing land. Redevelopers, and owner-participants purchasing additional land, are required to pay fair market value for the property in its improved state, which will obviously reflect the value of the site improvements to the extent they benefit the property and enhance its market value.

It is entirely reasonable to require owner-participants to pay that portion of the cost of site improvements installed by the Agency benefiting the owner-participants' land, which is reflected in the re-use value of the land.

It is also entirely reasonable to require that redevelopers and owner-participants purchasing land from the Agency pay fair market value for uses in accordance with the Final Plan for such land in its improved state. Certainly, the Agency would be severely censured if it sold the land for less. On the other hand, no one would buy it for any greater price. How a sale at fair market value could amount to an unconstitutional exemption in favor of the redeveloper is not clear.

The answer to the Goldmans' contention was well stated by the court in *Randolph v. Wilmington Housing Authority,* 139 Atl. 2d 476 (Del., 1958), wherein the plaintiff complained of a statutory requirement that the redevelopment authority sell the land in the project area for its fair value. The court rejected the plaintiff's contention, stating at page 486:

> ". . . The statute requires that the land shall be sold or leased 'at its fair value.' What more could be said?"

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IN THE

Supreme Court of the United States

October Term, 1964
Case No. 426

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

REPLY TO MOTION TO DISMISS OR AFFIRM.

The Agency (appellee) has moved to dismiss or affirm appellants' appeal to this Court on two grounds:

1. Only one of the purported federal questions set forth in appellants' Statement of Jurisdiction was properly raised and preserved in the California courts.

2. The federal questions set forth in appellants' Statement of Jurisdiction are not substantial.

I.

Reply to Appellee's Contention That Only One of the Federal Questions Presented by Appellants in Their Statement of Jurisdiction Was Properly Raised and Preserved in the California Courts.

As a *general* reply, appellants respectfully point out that the California Supreme Court in its Opinion (Appendix "B" to appellants' J. S.) passed on each of the federal questions appellants' have presented in their appeal, and as this Court has repeatedly ruled, this, without further examination of the record, establishes the jurisdiction of the Court.

Raley v. Ohio, 360 U. S. 423, 436 (1958) which was also relied upon by the Court in *Kerr v. California,* 374 U. S. 23, 44 (Footnote No. 15), (1962):

> "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it."

Cissna v. Tennessee, 246 U. S. 289, 293:

> "The record does not show that *Cissna* specifically set up in the state courts any contention that the decision of the merits turned upon questions of federal law, except as this may appear by inference from the nature of the grounds upon which the decision was rested. But if the supreme court of the state treated federal questions as necessarily involved and decided them adversely to plaintiff in error, and could not otherwise have reached the result that it did, it becomes immaterial to consider how they were raised."

The cases cited by appellee at the bottom of page five in its Motion to Dismiss or Affirm, have, with the possible exception of *Mutual Life Ins. Co. v. McGrew,* 188 U. S. 291, no application to the facts in this case. In each of the cases cited by appellee, except for *Mutual Life Ins. Co. v. McGrew* no federal question was presented to the lower courts until a petition for a rehearing was filed with the state supreme court. Appellants submit that the record shows that this is not the case here. With regard to *Mutual Life Ins. Co. v. McGrew,* appellants believe they have met the requirements of jurisdiction as set forth by this Court therein. Similarly, appellants submit that the cases cited by appellee at the top of page 11 of their Motion are not applicable, or at least conclusively applicable to the facts of this case.

Appellants wish particularly to emphasize the Federal Questions numbered (1) and (6) in their Notice of Appeal and Statement of Jurisdiction, and in order to demonstrate the manner in which the California Supreme Court passed on these questions, and that this Court may in any event have before it details of the record as it pertains to each, a synopsis of where and how each was raised is presented.

1. That Article XIII, Section 19, of the California Constitution and Sections 33950-33954[1] of the California Health and Safety Code Violate the Due Process and Equal Protection of the Laws Provisions of the Fourteenth Amendment to the United States Constitution.

In a Joint Pre-Trial Statement entered into by Appellants and the Agency, it was agreed that one of appellants' contentions was:

> "(2) the tax allocation features of the Final Plan, of the Community Redevelopment Law (California Health and Safety Code Sections 33000 *et seq.*) and of Article XIII, Section 19 of the Constitution of the State of California are *unconstitutional.*" [C. T. p. 551, lines 9-13. Emphasis added.]

In an Amendment to Joint Pre-Trial Statement entered into by Appellants and the Agency, it was stipulated that

> "the legal contentions of the Goldmans" (the Appellants herein) "are hereby amended to read as follows: * * * B. Sections 33950-33954 of the California Health and Safety Code, which authorize the inclusion in the Final Plan of Sections c.8.d(1) and (2), providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopment, *are void for*

[1]Sections 33950-33953 were re-numbered in 1963 as Sections 33670, 33671, 33672 and 33673. Section 33954 was repealed. The latter was not involved in the Constitutional questions raised herein. (See Appendix C, p. 90, Appellants S. J.)

uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area, because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made." [C. T. p. 575, lines 10-12 and p. 575, line 26, to p. 576, line 6. Emphasis added.]

The Trial Court in its decision in favor of the Agency ruled, under *Conclusions of Law:*

"Item 29: . . . and said Article XIII, Section 19 does not violate the Constitution of the United States." [C. T. p. 218, lines 30-31.]

Item 28 (Referring to Article XIII, Section 19 of the California Constitution, and Sections 33950-33954 of the California Health and Safety Code): "neither under said constitutional provision nor said statutory sections is the City Council required to obtain the consent of the other taxing agencies. . . . in respect to the allocation of taxes as provided in the Final Plan," (referring to the Final Plan for the Bunker Hill redevelopment project).

"Item 46: That Ordinance No. 113,231 does not violate the *Fourteenth Amendment* or Article I, Section 10 of the Constitution of the United States," (referring to the Los Angeles City Council ordinance that approved the Final Plan for the Bunker Hill redevelopment project, which was enacted in part pursuant to Article XIII, Section 19 of the

California Constitution and Sections 33950-33954 of the California Health and Safety Code. Emphasis added.)

In the Opinion portion of its Decision, the Trial Court ruled, without specifically mentioning the Federal Constitution, that Sections 33950-33954 do not constitute an "illegal abdication of legislative responsibility in permitting a municipal legislative body to deprive other taxing agencies of taxes without their consent". It is submitted, however, that when this is read in connection with the Court's findings under Conclusions of Law *(supra)*, that this becomes a ruling by the Court that Sections 33950-33954 do not violate the Fourteenth Amendment to the United States Constitution.

In its Opinion the Court also ruled that a city council when it allocates to pay for a city redevelopment project, taxes belonging to other taxing agencies, is not required to obtain the consent of the agencies whose taxes are thus taken without their consent. This, of course, is a ruling contrary to appellants' contention that if such consent is not obtained, then, insofar as these other taxing agencies and their taxpayers are concerned, they are deprived of due process of law (and equal protection of the laws)[2] as guaranteed to them by the Fourteenth Amendment. (See Trial Court's Decision, Section IX, the Goldman Action, Subsection 2, Consent of Other Taxing Agencies).

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[2]Although denial of "equal protection of the laws" was not specifically contended until the case reached the California Supreme Court, it is submitted that the various rulings of the Trial Court impliedly pass upon it.

In an appeal that was ultimately heard by the California Supreme Court,[3] appellants in their Opening Brief repeated verbatim their contention made in the Trial Court that Sections 33950-33954

> "are void for uncertainty, in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies . . . because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made." (A. O. B. p. 4.)

The attention of this Court is respectfully called to the fact that Appendix "A" of the Agency's Motion to Dismiss or Affirm, which purports to set forth where Appellants raised this federal question, does not contain this reference to where the question was raised before the Appellate Court. Actually, the Agency itself, on page 282 of its Respondent's Brief in the Appellate Court, summarized Appellants' contentions to the Court as follows:

> "(a) The City, by approving the Plan, attempts to appropriate taxes levied by another agency which has not consented. The City has no such power.
>
> "(b) While the State Legislature may have attempted to grant the City that power by enacting

[3]An appeal from the Trial Court Decision by appellants and other respondents in the case, was heard by the District Court of Appeal. The District Court did not pass on any of the constitutional questions raised by appellants in their appeal to this Court, but remanded the case to the Trial Court on other grounds, limiting its Decision to discussion of those grounds. Upon petition of the Agency and City the California Supreme Court then took jurisdiction.

California Health and Safety Code Sections 33950-33954, it is beyond the power of the Legislature to grant that power to a city.

"(c) Section 19 of Article XIII of the California Constitution, adopted in 1952, which ratified Sections 33950-33954 of the Health and Safety Code, does not in fact grant the Legislature power to authorize the allocation of increased tax increments to the payment of Agency obligations under these circumstances."

And, the Agency itself placed before the Appellate Court the contention of appellants that Article XIII, Section 19 of the California Constitution and Sections 33950-33954 of the California Health and Safety Code violate the Fourteenth Amendment to the United States Constitution, when the Agency stated, on page 284 of its Reply Brief:

"Nor can an appeal be made to the Federal Constitution on the ground that depriving a local government entity of a portion of its tax base, or a portion of the revenue that it might otherwise possess, *violates a federal protected constitutional right of that agency.*" (Emphasis added.)

In addition *Trautwein et al.*, one of the cases consolidated with Appellants in the California court proceedings, and who has separately filed an appeal to this Court, argued to the California Supreme Court (P. 54 Trautwein Reply Brief, under heading "Constitutional Questions") that:

"1. Sections 33950-33954 of the Health and Safety Code provide for an unlawful delegation by the State Legislature of its legislative discretion

to another agency, in that it has authorized (in this instance) the Los Angeles City Council to allocate tax money belonging to other agencies whose taxpayers are not represented on the City Council. Assuming that the Los Angeles City Council is acting as a state agency, it is still acting only in an administrative capacity and an attempted delegation to it of legislative discretion without establishing an ascertainable standard is unconstitutional. *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners,* 40 Cal. 2d 436, 254 P. 2d 29. 2. Furthermore, because tax money belonging to other taxing agencies is allocated by the Los Angeles City Council to pay for the redevelopment bonds, it is taxation without representation and thereby violates the Due Process and Equal Representation Under the Laws provisions of the Fourteenth Amendment to the United States Constitution."

An Amicus Curiae Brief on behalf of the California Apartment Owners Association and the Apartment Association of Los Angeles County, Inc., was also filed with the California Supreme Court, and supported the contention of Appellants and Trautwein *et al.* that Article XIII, Section 19 and Sections 33950-33954 violate the Fourteenth Amendment to the U. S. Constitution. *Twelve pages* of this brief (Most of 13-25 and 27 and 28) were devoted to a discussion of the following contention:

"B. Sections 33950-33954 Combined With Sections 33008 and 33730-33747 of the Health and Safety Code Effect an Unlawful Delegation of Leglislative Discretion . . . and Vest Uncontrolled Legislative Discretion in a Partisan Agency (Los An-

geles City Council) and Result in Taxation Without Representation, Both in Violation of the Equal Protection of the Laws and Due Process Clauses of the Fourteenth Amendment of the United States Constitution."

The California Supreme Court in its Decision in favor of the Agency, spent several pages discussing and passing upon appellants contentions regarding Article XIII, Section 19, and Sections 33950-33954 of the Health and Safety Code, *and the question of their constitutionality under the provisions of the Fourteenth Amendment.* (See pp. 73-76, specifically, but also pp. 76-79, Apdx. "B", Appellants' J. S.) Among the comments of the Court were:

> "The contention of the Goldmans in this regard that the tax allocations constitute an illegal abdication of legislative responsibility in permitting a municipal legislative body to deprive other taxing agencies of taxes without their consent *is not sustainable* . . ."
>
> * * *
>
> "We are therefore in accord with the opinion of the Attorney General that neither under the *constitutional provisions* nor the *statutory provisions,* is the legislative body required to obtain consent or agreement from other taxing agencies in respect to the allocation of taxes as provided in the final plan." (Cal. Supr. Ct. Op., pp. 75 and 76, Apdx. "B" Appellants' J. S.; Emphasis added.)

In reaching these conclusions the California Supreme Court had before it not only the question as presented by the Goldmans, but also as framed by Trautwein

and as stated and extensively argued by the Amicus Curiae brief in support of this particular question raised by the Goldmans and Trautwein.

If the California Supreme Court did *not* pass on the question of whether Article XIII, Section 19 of the California Constitution, and Sections 33950-33954 violate the Fourteenth Amendment to the United States Constitution, in the Court's statements referred to and partially quoted *supra*—and appellants respectfully submit that the Court did—then the Court *must* have done so when, at the end of its Opinion, the Court stated:

"Such *other* contentions as appear to be made or suggested by *objectors*" (*i.e.* Goldman and Trautwein) "or by Amici Curiae *are without substance* and . . . *devoid of merit.*" (Cal. Supr. Ct. Op., Appellants J. S. Apdx. "B", p. 84; Emphasis added.)

6. Los Angeles City Ordinance 113231, Approving the Bunker Hill Urban Renewal Project 1-B Plan, Violates the Equal Protection Under the Laws Provision of the Fourteenth Amendment in That It Requires Owner-Participants in the Project to Pay Their Pro-Rata Share of the Cost of Site Improvements, But Does Not Require Developers Who Purchase Property Within the Project to Do So.[4]

Appellees do not contest that this point was properly raised and preserved in the California courts. (Aps. Mot. Dismiss/Affirm, p. 3, second paragraph under point "5").

Appellants alleged in their Original Complaint and First Amended Complaint (which were ultimately stipulated to be a responsive pleading to the Agency's *In*

[4]For purposes of clarity the question is somewhat reworded here from the way it was presented in the Notice of Appeal to this Court and appellants' Statement of Jurisdiction.

Rem action from which this appeal arises), that Los Angeles City Ordinance 113231 approving the Plan for the Bunker Hill Urban Renewal Project did not set forth clearly whether developers purchasing property within the Project would be assessed their pro-rata share of cost of site improvements [C. T. p. 120, Item "(b)" lines 24-27; "(d)" line 30 to p. 121, line 2; and p. 121, lines 12-19], and whether owners within the Project who wish to participate in the redevelopment of their land, may be required to pay a share of the cost of site improvements. [C. T. p. 121, lines 23-28.]

Appellants then alleged:

> "It is the contention of the defendants that they have discretionary power to determine . . . whether or not the developers may be exempted from such costs while at the same time imposing such costs against the owners of the land who agree to participate in the project." [C. T. p. 124, lines 18-19 and 26-28.]

Appellants contended this interpretation by the defendants

> "constitutes the granting of special privileges or immunities to an arbitrary class of persons, to-wit, the developers, and violates the equal protection of the laws guaranteed by both the State and Federal Constitutions." [C. T. p. 125, lines 19-24.]

Appellants next pointed out that under Section 33885 of the California Health and Safety Code (since recast as Section 33433), the Agency is required in selling land within a redevelopment project, to sell it for its "fair value", and that there is no ascertainable standard in the Plan that determines whether "fair value"

shall or shall not include the cost of site improvements. [C. T. p. 125, line 25, to p. 126, line 24.] Appellants then alleged:

> "It is the contention of the defendants that the Agency, in arriving at 'fair value', *with respect to a sale made to developers,* as distinguished from a sale made to owners who may be allowed to participate, may interpret 'fair value' to mean a price *less than the cost of the acquisition of the land* . . . and *less the cost of the installation of new public site improvements.*"

And that

> "It is the further contention of the defendants that in arriving at 'fair value' *with respect to owners* who may be permitted to participate in the project, the 'fair value' shall be interpreted by them (the Agency) to mean the *actual value of the land . . . plus the cost of the installation of new public site improvements.*" [Some of the emphasis added; parenthetical (the Agency) added. C. T. p. 126, line 25, to p. 127, line 9].

In an Amendment to the Joint Pre-Trial Statement entered into by appellants and appellees, it was stipulated that appellants' legal contentions included:

> "The Agency's interpretation of 'fair value' violates Article I, Section 2 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States in that such interpretation does not have a uniform application. Such interpretation also constitutes the granting of special privileges or immunities to an arbitrary class of persons, to-wit: the developers,

contrary to the provisions of Article I, Section 21 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States." [C. T. p. 577, line 32, to p. 578, line 9.]

The Trial Court in its Decision ruling against appellants, clearly stated appellants' contention that:

> "5. The provisions of the redevelopment plan which require an owner who agrees to participate in the redevelopment project to assume financial responsibility for his pro-rata share of the costs of the necessary site improvements . . . while at the same time exempting the redevelopers from a similar financial responsibility violates the equal protection provisions of the California and United States Constitutions." (Trial Court Decision, Section IX, "The Goldman Action," Subsection 4, "Re Costs of Demolition and Site Improvements").

The Court's answer to this contention, it is submitted, can be summed up in one quotation from its Decision, to wit:

> "A recoupment in the cost of clearance and new site improvements in land sold to redevelopers will be reflected in the 'fair market value' for which the land will be sold." (Next to last paragraph of said Subsection 4, Section IX, Trial Court Decision.)

On appeal, appellants in their Opening Brief, to the District Court of Appeal, which was ultimately considered by the California Supreme Court[5] again presented the contention:

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[5]See footnote 3, page 7.

> "The provisions of the redevelopment plan which require an owner who agrees to participate in the redevelopment project to assume financial responsibility for his pro rata share of the costs of the necessary site improvements while at the same time exempting redevelopers from a similar financial responsibility violate the equal protection provisions of the Fourteenth Amendment of the United States Constitution." (Goldman Opening Brief to District Court of Appeal, pp. 114-115.)

Appellants supported their contentions with ten pages of argument. (Pp. 115-125).

The California Supreme Court in its Opinion noted this "complaint of *unconstitutional* discrimination by objector Goldman" (emphasis added), and then ruled against appellants (the Goldmans) on the grounds that developers purchasing property within the Project would be required to pay "fair market value," and that

> "Fair market value would, of course, include the value of the necessary site improvements for which a participating owner who retains ownership of his own land is required to pay his pro rata share. Thus no unfair discrimination is shown." (Cal. Sup. Ct. Op., last paragraph Sec. 7, "Owner Participation As Provided by Final Plan", p. 61, Appx. "B", Aps. J. S.)

Thus, the California Supreme Court clearly passed upon this Federal question, and as, Appellees admit, (*supra* p. 11), this Federal question was correctly raised and preserved in the California courts.

In addition, Appellants in a Petition for a Rehearing to the California Supreme Court, stated:

"The Court Erred In Determining That the Final Plan Imposed[6] On a Participating Owner the Assumption of Responsibility For His Pro Rata Share of the Costs of Necessary Site Improvements Whereas Redevelopers Are Exempted From a Similar Financial Responsibility." (App. Pet. Rehrg. p. 8.)

The California Supreme Court *denied* (as distinguished from *dismissed*) Appellants' Petition for a Rehearing.

II.

Reply to Appellee's Contention That the Federal Questions Presented by Appellants Are Not Substantial.

1. That Article XIII, Section 19, of the California Constitution and Sections 33950-33954[7] of the California Health and Safety Code Violate the Due Process and Equal Protection of the Laws Provisions of the Fourteenth Amendment to the United States Constitution.

It is contended by Appellees (p. 11, Aps. Mot. Dismiss/Affirm) that the unconstitutional delegation of legislative discretion authorized by the California Legislature by Sections 33950-33954 of the Health and Safety Code, and the *taxation without representation* that results therefrom, including, in the case of the Bunker Hill redevelopment project alone, the disenfranchisement of more than three million persons in Los Angeles County, is not a substantial Federal question because only the states of California and Minnesota are *at this time* involved! It is submitted that Appellee's argument is one of the most incredible ever made to

[6]In the original Petition for a Rehearing the words "Did Not Impose" were inadvertently used, instead of the word "Imposed."

[7]See footnote 1, page 4.

this court. Only the citizens of California and Minnesota are affected! Therefore this Court should not consider the contentions of Appellants! Suffice it to reflect, that one of the most cherished principles of our system of government is that if one single individual, no matter how lowly, in this great nation, may be deprived of due process of law or equal protection of the laws, that the highest court in this land will make a place in its crowded schedule to see that that person is heard.

What are the actual facts? How substantial a Federal question *is* presented by this alleged deprivation of rights guaranteed by our Federal Constitution?

1. Sections 33950-33954 effect an uncontrolled, naked delegation of legislative discretion by the California Legislature to another governmental agency. Due process of law and equal protection of the laws disappear. If Sections 33950-33954 are allowed to stand unchallenged, they will establish a far-reaching precedent under which legislative bodies, state and local, and perhaps even Congress, may abdicate, *without any control whatsoever,* the legislative discretion and responsibility which they are elected by the people to exercise, to agencies that are neither elected by or responsible directly to the people.

2. Sections 33950-33954 go further. They delegate legislative discretion to a *partisan* body. In the instant case they authorize the Los Angeles City Council to finance the city's share of the cost of a *city*[8] redevelopment project (in which the Council obviously has a

[8]Technically, any redevelopment project in California is a *state* project. But for all practical purposes, and realistically, a redevelopment project undertaken by a city is a *city* project.

prejudiced and vested interest) by appropriating tax money belonging to Los Angeles County, the Los Angeles School District, the Los Angeles County Flood Control District and the Metropolitan Water District. Yet many of the School District taxpayers, and more than half of the County, Flood Control District and Water District taxpayers (some *three million* of the residents of the County, Flood Control District and Water District)[9] live outside of the City! Furthermore, members of the City Council are under oath to represent the best interests of *City* taxpayers and residents.

(It is important to note that Sections 33950-33954 do not delegate *administrative* authority. They do not authorize the Council as an *administrative* agency of the state, to determine whether certain conditions have been met, such as whether other non-city taxing agencies, the county, school district, etc., will benefit from a city redevelopment project, in which event the use of county, school district, etc., tax money to pay for the project shall be *mandatory*—as in cases where local agencies are authorized to determine whether or not under state law certain property *shall* be exempted from paying taxes. On the contrary, Sections 33950-33954 give the Council absolute, uncontrolled *discretion* to

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[9]It is a matter of public record that the Los Angeles City School District includes areas outside of the City, but the exact number of persons residing in these areas is unknown to appellants. Los Angeles County population in 1962 is given as 6,038,771 and Los Angeles City as 2,470,015, in the 1962 County and City Data Book published by the U. S. Census, at page 32. Thus, in 1962, 3,568,656 persons in Los Angeles County resided outside the City (which is part of Los Angeles County). The Los Angeles County Flood Control and Metropolitan Water Districts include virtually all, but not quite all of Los Angeles County.

decide whether it *prefers* to finance a City redevelopment project by using county, school district, etc. tax money, or whether to finance it in some other manner, such as by a municipal bond issue, or revenue bonds, or a municipal tax, or from the City's general fund, etc.)

3. The unconstitutional delegation of legislative discretion authorized by Sections 33950-33954, clearly results, appellants contend, in *taxation without representation.* In the case of the Bunker Hill Project, taxes have been taken to pay for this *city* project (which it actually is, although technically a state project) from some *three million* or more Los Angeles County, Los Angeles Flood Control District and Metropolitan Water District residents (*supra*), and from an unknown number of residents of the Los Angeles School District, *without their consent,* and without any recourse available to them. None of these County, School District, Flood Control District, and Metropolitan Water District residents and/or taxpayers are represented in any way on the Los Angeles City Council. By contrast, city taxpayers (whose money is saved when the Council allocates County, School District, etc. tax money to pay for a city project) *are represented* on the Council. They elect council members, can recall them, elect and can recall the mayor who may veto council action (including action on redevelopment projects)—and as noted, Council members are under oath to *represent* the interests of city residents and taxpayers. (It is respectfully submitted that designating the City Council a *state administrative agency* when its acts on redevelopment matters, which it admittedly is but realistically is in *name only,* does not and can not change the foregoing facts.)

4. Specifically in the case of the Bunker Hill Project, the Los Angeles City Council acting under the authority granted by Sections 33950-33954, has shifted *three-fourths*[10] of the cost of this *city* redevelopment project onto the taxpayers of Los Angeles County, the Los Angeles School District, the Los Angeles County Flood Control District and the Metropolitan Water District.

Using the Agency's own figures, that portion of the cost of the *City's* Bunker Hill Project which the Los Angeles City Council, acting pursuant to Sections 33950-33954, has imposed on the County, the School District, the Flood Control District and the Metropolitan Water District, and their taxpayers, will at the minimum be about $15,000,000, and could run $30,000,000 or more.[11] But this is only the beginning. The City

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[10]It is a matter of public record that in 1959, the year the Bunker Hill Project was adopted, the combined tax rate levied against property within the Bunker Hill Project area was $8.0914, made up as follows: Los Angeles City $1.9574 (24%), Los Angeles County $2.0859 (26%), Los Angeles School District $3.4909 (43%), Los Angeles County Flood Control District $0.3872 (5%) and Metropolitan Water District $0.17 (2%). The 1964 rate is $9.1837 made up of: City $2.0871 (23%), County $2.3997 (26%), School District $4.2205 (46%), Flood Control $0.3364 (3.6%) and Water District $0.14 (1.4%).

[11]Sec. 10 of L. A. City Ord. 113231, approving the Bunker Hill Project Plan (See p. 103 Apdx. "C", Appellants' J.S.) authorizes the Agency to issue $20,000,000 in bonds with a maturity of up to 40 years, pursuant to Art. 4 of Ch. 5 of the California Community Redevelopment Law (this being another manner of citing Sections 33950-33954 of the Health and Safety Code—See Sec. 33000 thereof). See also pages 54-56 of Respondents' (Agency's) Brief in the California appellate courts. The Agency has stated, however, that it intends to issue only $15,000,000 in bonds (p. 54 said Brief), and that it expects to retire the bonds within ten years. (This latter statement has been publicly made, but appellants are not aware that it is a matter of court record. However, it is used here to calculate

of Los Angeles and other cities throughout California have under consideration and in various stages of preparation, a considerable number of urban renewal projects, which under Sections 33950-33954, if this Court does not rule these sections unconstitutional, will result in taking from other taxing agencies, from counties, school districts, water districts, etc., tens and probably hundreds of millions of dollars of their tax money to pay for these *city* redevelopment projects.

5. It is possible under Sections 33950-33954 for certain California cities (twenty in Los Angeles County

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the most favorable figure from the Agency's viewpoint). Using these *minimum* Agency figures, and assuming, conservatively, an interest rate of 4½% (it would make little difference for the purposes here whether it was 4% or 5%), and assuming a uniform amortization over 10 years (it is much more likely that amortization will not begin for several years, so that interest calculations here are probably on the *low* side) it can be calculated that the approximate *minimum cost* of the Bunker Hill Project bond issue to the County, School District, Flood Control District and Metropolitan Water District, which under present and recent tax schedules will pay three-fourths of the principal and interest of the bond issue (*supra*), will be: Principal = $15,000,000 x ¾ = $11,250,000. Interest = $15,000,000 x 4.5% = $675,000 divided by two to obtain average annual interest = $337,500 x 10 years = $3,375,000 total interest. $11,250,000 principal plus $3,375,000 interest = $14,625,000 as the *minimum* cost. Using the *maximum* permitted principal amount of $20,000,000 and maximum maturity date of 40 years, as authorized by Ord. 113,231, and subsequently by Agency Resolution No. 193 [Agency Ex. 42, see p. 46 said Agency Brief], the calculations are: Interest = $20,000,000 x 4½% = $900,000 divided by two to obtain average annual interest = $450,000 x 40 years = $18,000,000 x ¾ = $13,500,000. Added to $15,000,000 principal ($20,000,000 x ¾) this gives $28,500,000 as a maximum figure. Since, however, amortization (retirement) of bonds would probably not begin for several years, considerably increasing interest costs, so that the maximum cost to the County, School District, could easily be $30,000,000, or substantially more.

alone)[12] to finance the cost of their *city* redevelopment projects entirely by appropriating tax money belonging to counties, school districts, water districts, etc., without spending *one cent* of city taxpayers money, or federal money (thus avoiding coming under federal control).

Argument.

The question of whether Sections 33950-33954 of the California Health and Safety Code, and Article XIII, Section 19 of the California Constitution, violate the due process and equal protection of the laws provisions of the Fourteenth Amendment, have been the subject of widely ranging and lengthy exploration and debate (including two amicus curiae briefs) in this litigation which is now presented to this Court on appeal. Appellant is frank to admit that as the debate has progressed, the essence of the argument that Sections 33950-33954, and possibly Artile XIII, Section 19, violate the Fourteenth Amendment has become clearer. It is with this in mind, that Appellant hopes the following summation, kept as succinct as possible, although necessarily repeating for clarity and emphasis certain facts and arguments already set forth, will be helpful to the Court and all parties.

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[12]Pages 86-88 and 114-133 of the 1963 Taxpayers' Guide published by Los Angeles County, show that twenty cities within the County levy no real property tax. (They finance their cost of government by a sales tax, or other forms of taxation). But the same tables in the Guide show that Los Angeles County and various school, water and other districts, do levy a tax on real property within these cities. Thus, any of these cities can undertake a redevelopment project, and by allocating taxes from property within the project to pay for the project's cost (as permitted by Sections 33950-33954), the city, since it levies no property tax, could avoid paying any of the cost of the project, and instead shift the *entire* cost of the project onto the County and other non-city taxing agencies that do levy a tax on property within the project.

Sections 33950-33954 of the California Health and Safety Code were enacted in 1951. Their full text may be found in Appendix "C" of appellants' Statement of Jurisdiction. Briefly, Sections 33950 through 33953 provide that a redevelopment project "may" be financed entirely or in part by appropriating for this purpose all taxes resulting from any *increase* in the assessed value of real property (land and improvements) occurring within the redevelopment project area after the date of the adoption of the project. *Taxes* that may be thus appropriated are defined as *ad valorem* taxes levied by *any* taxing agency — a city, county, school district, any special districts, etc. Section 33954 provides that Sections 33950 through 33953 are to become effective upon adoption of an amendment to the California Constitution authorizing the tax allocations permitted by them. In 1952 such an amendment was approved by the California electorate as Section 19 of Article XIII of the Constitution. (See Apdx. "C", appellants' J. S.)

(In 1962, the next to the last paragraph of Section 19 of Article XIII, which had the effect of specifically ratifying and validating Sections 33950 through 33953, was repealed at the general election, as obsolete. Article XXII, Section 3(2) had been added to the Constitution in 1960, ratifying all matters previously ratified by individual clauses of the Constitution. In 1963, Sections 33950 through 33953 were re-enacted as Sections 33670 through 33673 of the Health and Safety Code, and Section 33954, being no longer necessary, was repealed.)

At the time Sections 33950-33954 were enacted, there were also enacted Sections 33008, 33278 and 33730 to

33747 of the Health and Safety Code.[13] These sections were in effect at the time Section 19 of Article XIII of the Constitution was approved, and in 1959 when the Bunker Hill Project Plan was adopted. Among other things, these sections designate the legislative body of a city (such as the Los Angeles City Council) as the governmental agency that shall give *final approval* to any redevelopment project in the city, *including the method of financing the project*. Thus, the effect of Sections 33950-33954, in conjunction with these other sections, was to authorize the Los Angeles City Council in the case of Bunker Hill Project, to decide for itself, completely at its own discretion, whether to finance three-fourths (*supra*) of the city's share of the cost of the project by appropriating for that purpose tax money belonging to Los Angeles County, the Los Angeles School District, and other non-city taxing agencies, or whether to finance it exclusively with city funds, *i.e.*, by a special tax, or bond issue, or from the city general fund, etc. Obviously, the Council chose to shift this financial burden onto the County, School District, etc., and their taxpayers.

The road into the unconstitutionality that in appellants' opinion cloaks Sections 33950-33954, begins with this abdication by the legislature of the discretion and responsibility granted to it by Article XIII, Section 19, of the California Constitution. This provision of the Constitution was enacted by a vote of *all* the people of the state, and through it the people said to the legislature, as the representative of *all* the people, you are

[13]In 1963 the matters covered by these sections were re-enacted in Sections 33007, 33120 and 33300 through 33372 of the Health and Safety Code.

given the authority to decide (*i.e.*, "The Legislature may provide . . . ."), and you are given the *responsibility* of deciding whether *in your judgment* redevelopment projects in the state *shall* be financed by the tax allocation procedures authorized by Article XIII, Section 19, or *under what conditions* they shall or may be so financed. Applicants submit that the basic unconstitutionality of Sections 33950-33954 arises from the fact that the legislature did not follow this constitutional procedure, but instead passed on to "local legislative bodies" the responsibility and decision making authority the people through the state constitution had placed in its hands.

Let us examine what occurs when the legislature abdicates its responsibility and decision making authority, as it has done through Sections 33950-33954, to another agency, in this case the Los Angeles City Council. The Council is given the power to decide whether to finance three-fourths of the city's cost of a city redevelopment project by appropriating for that purpose undetermined millions of tax dollars belonging to Los Angeles County, the Los Angeles School District, the Los Angeles Flood Control District, and the Metropolitan Water District—without obtaining the consent of these taxing agencies or their taxpayers, and without any recourse available to them. Yet, as noted, more than three million of the people in the county and the flood control and water districts and many of the people in the school district, live outside of the city, beyond the jurisdiction of the Council. They have no control over the Council. They cannot vote for Council members or recall them, or vote for or recall the mayor who has the power of veto over actions of the Council, in-

cluding redevelopment matters. When the taxes of these citizens are taken without their consent by an act of the City Council, *taxation without representation* taints the act. These citizens have no redress. The Council is not responsible in any way to them. It has no interest in them other than a neighborly interest, and for several hundred thousand living 30, 40 and 50 miles from the City Hall, not even that.

Under such circumstances, these citizens residing beyond the jurisdiction of the City Council, are deprived of their property (taxes) without any semblance of due process of law. Furthermore, since the county, school district, etc. levy taxes against property within the Bunker Hill Project to pay for specific services, many of which *must* be rendered, such as educating children of families living within the Project, when the tax money that would normally pay for these services is instead used to pay for the Project, the loss has to be made-up by an increased tax levy on county, school district, etc. taxpayers living outside the project, including those living, and whose property on which the increased levy falls is located, outside of the city. For those who justify the Council's action with the rationalization that it is acting as a state agency with all the power and responsibility entrusted to the legislature by the state Constitution, under Article XIII, Section 19, this is of no matter. For those whose taxes are thus taken, and, appellants submit, for those who guard the people's constitutional rights, this is *taxation without representation*.

There is no question that in *name* (at least so appellee alleges and the state courts have ruled) the Los Angeles City Council, when it acts in redevelopment

matters, acts as a state agency. But semantics cannot alter the facts. For those citizens who have their taxes taken, or taxes increased, without any representation or recourse, reality removes the cloak of terminology. Thus, as early as *Henderson v. Mayor of New York,* 92 U. S. 259, 268, this Court said: "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." This was quoted in *Wisconsin v. J. C. Penney,* 311 U. S. 432, where the Court also commented: "The descriptive pigeon hole into which a state court puts a tax is of no moment in determining the constitutional significance of the exaction." In *International Harvester Co. v. Wisconsin Dept. of Taxation,* 322 U. S. 435, 441, the Court stated: "In determining whether a tax is within the state's constitutional power, we look to the incidence of the tax and its practical operation, and not its characterization by state courts."

Let us explore further. Members of the Los Angeles City Council are under oath to represent the best interests of the citizens and taxpayers of the city. And as has been well asked by Amicus Curiae before the California Supreme Court; Can an act of the legislature unswear that oath? It is asking far too much of human nature and the law, appellants submit, to ask that members of the City Council, who by their very nature have a vested interest in and deep prejudice toward their city, put aside for a moment while they act *only* and *impartially* as a *state agency*, not only their oath of office, but all conscious and *subconscious* prejudice toward their city, and toward the people who they represent, who elect them to office and who can recall them, to whom they owe their office, to whom they

must look for re-election? Yet these council members are expected and authorized to make a decision vitally affecting millions of persons residing outside of the city, that will take from them the millions of dollars of their *own* tax money. Furthermore, there is a direct conflict of interest, for if the decision is made in the interests of the citizens and taxpayers residing and owning property outside the city, it will be against the interest of the citizens of the city whose interests the Council members have sworn to uphold. And vice versa, for if the decision is made in the interests of city taxpayers, it will be against the interest of residents and taxpayers outside the city. Finally, as *Amicus Curiae* has suggested, would not members of the City Council be in violation of their oath to the people of the city, if, given the opportunity, as they are by Sections 33950-33954, they did not "unload" the cost of a city redevelopment project on taxpayers living outside of the city?

In the classic case of *Carter v. Carter Coal Company*, 298 U. S. 238, 311, this Court said with reference to the delegation of legislative authority to a partisan agency, "this is legislative delegation in its most obnoxious form" and is "clearly a denial of rights safeguarded by the due process clause". While this case has been the subject of considerable review and discussion, it is submitted that the fundamental principles quoted have not changed.

In the case of the Bunker Hill Project, under Sections 33950-33954, citizens residing in Los Angeles County outside of the City of Los Angeles, are deprived not only of due process of the law, but of equal protection of the laws. As previously observed, they cannot elect or recall Los Angeles City Council members

or the mayor, and neither the Council or mayor is responsible to them in any way. By contrast, residents of the City are fully represented on the Council. They elect and can recall council members, and elect and can recall the mayor. The Council and mayor are responsible to them, and have taken an oath to represent their interests. Clearly, citizens residing outside of the city, do not have, no matter what name is given the Council, State Agency or otherwise, equal protection under the laws (sections 33950-33954) alongside of residents of the city.

One of appellee's most convincing sounding arguments (but again, it is submitted it is illusory) is that there is no difference between appropriating part or all the taxes paid by property within a redevelopment project in order to pay for the project, and exempting part or all of the assessed value of the property within a project from paying taxes, which, appellee asserts the state could do. (App. Mot. Dismiss/Affirm, p. 15.) Appellants agree that the state could do this, and also, as appellee argues, that the end result is the same, namely, the taxing agencies involved lose part or all of their tax revenue from property within a redevelopment project. But there is an important difference between authorizing a city council to *decide* whether taxes belonging to certain non-city taxing agencies shall be appropriated to pay for a city redevelopment project, and the constitutionally approved act of a legislature tax-empting *all* property of a certain category (*i.e.*, that meets certain criteria or standards prescribed by the legislature). The difference is that *the legislature* as the representative of *all* the people in the state, *makes the decision* that property falling in

a certain category shall be tax-exempt, and then prescribes *the standards or criteria* that a property must meet to be exempted. When the legislature makes such a decision there is no option or uncontrolled discretion left to a city council or other local governing body, or state agency, or public official. The only act required of whoever allows the tax-exemption is an *administrative* one of determining that the criteria prescribed by the legislature have been met. By contrast, as already discussed, Sections 33950-33954 pass on to a city council *uncontrolled discretion* to decide *whether* to allocate taxes in a redevelopment project to pay for the project (or to use the parallel offered by appellee, to "tax-exempt" property within the project). The Council is given the absolute decision in the matter, with no criteria or standards to guide it. Thus we return to the contention of appellants that such absolute legislative discretion cannot be delegated by the legislature, and particularly to a city council that has a heavy partisan interest in the outcome of its decision, even to the extent that it is under oath literally to decide in a manner beneficial to its partisan interest; and where, because it is *discretion* and not *administrative authority* that is delegated, taxation without representation results.

The cases cited by appellee on page 15 of its Motion hardly support appellee's argument that a tax allocation is no different from a tax exemption. If anything, they underscore what appellants have been pointing out. First, in all of the cases, except the New York case, in the statute involved the legislature has not said that certain property *may*, but that it *shall* be tax-exempt. In other words, as appellants have attempted

to distinguish, the legislature has *made the decision,* not passed it on to another agency to make. In the New York case, the tax-exemption statute involved, Section 3426 of McKinney's Unconsolidated Laws of New York, was permissive and not mandatory. But the legislature has since re-enacted it to make the tax-exemption *mandatory.* (Sec. 260, Private Housing Finance Law, McKinney's Consolidated Laws of New York). Appellants also believe that it is possible that under the original New York statute the discretion granted to local governmental agencies, did not involve any taxes belonging to other agencies or to taxpayers beyond the jurisdiction of the local agency. It is noteworthy that in none of the cases cited by appellees were the constitutional questions presented by appellants raised. It would seem a reasonable assumption that this is because in the statutes involved (except for New York, which has since been changed) the legislatures made the decision that certain property should be tax exempted, and thus there was no question of unconstitutional delegation of uncontrolled legislative discretion.

Appellee argues that the county, school district, etc., do not actually lose any tax money when their taxes are allocated to pay for a city redevelopment project, because the taxes allocated will come from new construction and increased land values brought about by the project. This is one of those appealing, but illusory "something for nothing" arguments. Although it might be asked if the argument is really pertinent to the discussion, because the ultimate question is not whether the county, school district, etc. benefit from the Bunker Hill Redevelopment Project, but whether their taxes are taken without representation, regard-

less of benefit, appellants believe the fallacy of the argument should be exposed and any application it might have to the facts of this case, refuted.

The basis of appellee's argument is appellee's *assumption* that the new construction in the Bunker Hill Project will be construction attracted to Los Angeles County by the Project. (Since the County includes the Los Angeles School District, Flood Control District and Metropolitan Water District, the county alone is mentioned hereafter.) But this assumption is not supportable, at least, as regards much or most of the anticipated construction in the Project. Consider the 3100 or more apartments to be built in the Project. [Sec. H4, Final Plan, p. 22.] Will they attract new people to Los Angeles County? Will people be motivated to move here just because there is a Bunker Hill redevelopment project? Hardly so. Rather, appellants submit, people who move into apartments on Bunker Hill will move there from other parts of the county (whose 4,000 square miles, half the size of New Jersey, surround the project), or they will be people who were coming to Los Angeles anyway. In either case, the result will be a decreased demand for apartments in other sections of the county, and therefore fewer apartments will be built and pay taxes in these other sections. Or, stated another way, if there were no Bunker Hill Project, these apartments would still be built somewhere in the county and would pay taxes to the county, the flood control and water districts, and in many instances to the school district.

Will the new commercial buildings built in the Project be buildings that would not otherwise be built and pay taxes in Los Angeles County? Again, the answer is,

in the main, no. If a business already locate in the county needs additional office or store space, or a branch, and can economically justify expanding, it is going to expand, and new construction to meet its needs will be built and will pay taxes, whether or not there is a Bunker Hill Project. Nor, can it be sensibly argued that the Project will attract any significant number of firms to the county from other parts of the state or country. A business is going to move here, or open a branch here, only if there are persuasive economic reasons for doing so—a need to better serve customers, meet competition, expand its market, etc. And if there are persuasive economic reasons to move here, the firm is going to do so, and again, a building will be built for it, or rented to it, and in either case pay taxes, whether or not there is a Bunker Hill Project.

The recent completion of two major buildings in downtown Los Angeles dramatically illustrate appellant's point. During hearings before the Los Angeles City Council the Agency described a million square foot office building to be built by a private company in the Project if it were approved. The inference was that this was typical of the new construction and taxes that the Project would bring to the city, county, school district, etc. But the Agency refused to reveal the name of the Company that would build the building. (P. 67 O. B. Respondent Swigart and p. 67 Agency's "Respondent's Brief", Calif. App. Cts.) Only at the Trial was the Agency forced to reveal the name [R. T. 219 *et seq.*]. Then it turned out to be the Occidental Life Insurance Company which ultimately built not in the Project area, but elsewhere in downtown Los Angeles. It is a matter of public record that

the Occidental building cost about $25,000,000 and will pay, at the present tax rate and the building's present assessed value, about half a million dollars in taxes each year to the city, county, school district, etc. This is half a million dollars that the city, county, school district, etc. would not today be receiving if the building had been built in the Project! Could there be a clearer demonstration that far from benefiting the county, school district etc. and their taxpayers, the Project will burden them.

The second building was a multi-story, multi-million dollar structure built by the Pacific Telephone and Telegraph Company within the Project area. It was built as an addition to facilities the company already owned within the Project area, because the company needed additional space. Again, the Project had nothing to do with inducing the Telephone Company to build. In fact, the building was built *in spite of* the Project, for it had to be built to exacting standards imposed by the Agency. But there was impounded as of July 31, 1964, in a "Bunker Hill Trust Account" in the office of the County Auditor-Controller, and pending outcome of this litigation, $743,333.98, representing taxes received from an increase in the assessed value of the Bunker Hill Project area since the date it was adopted. The records show that this increase is *entirely* due to, and the impounded $743,333.98 comes *entirely* from the telephone company's new building. Again, rather than benefiting county, school district, etc. taxpayers, the Project is taking money from them.

The arguments and facts set forth by appellants in the preceding four paragraphs are also offered as an incontrovertible refutation of appellee's clearly errone-

ous conception expressed on page 14 of appellee's Motion to Dismiss or Affirm, that "were it not for the redevelopment project which improves the deteriorated area, there would be no increased valuation" and that "therefore, the tax rates elsewhere (county, school district, etc.) would, absent the redevelopment project, be just as high." (Parenthetical explanation added.)

Appellee in its argument also overlooks the fact that taxes levied by the county, school district and other taxing agencies against property within the Project, are levied to pay for services provided by these taxing agencies, including the education of children of families residing in the Project. Most of these services must be provided, and if taxes from property within the Project that would normally pay for them are siphoned away to pay for the cost of the Project itself, then county, school district, etc. taxpayers residing and owning property outside of the Project are forced to pay higher taxes to make up for those diverted to pay for the Project. Incidentally, this is a clear illustration of appellant's argument that the provisions of Sections 33950-33954 ultimately result in taxation without representation. The inevitable increase in taxes that county, school district, etc. taxpayers must pay to make up for the taxes diverted to pay for the Project, are the result of an action taken by the Los Angeles City Council —yet, as noted, over half of the county, flood control and water district, and many of the school district taxpayers whose taxes are thus increased, reside, and their property is located, outside the jurisdiction of the Council, and they have no representation whatsoever on the Council.

Jurisdiction.

The attempt of a city legislative body, under the guise of a state agency or otherwise, to appropriate taxes of other taxing agencies over which it has no jurisdiction, and to in effect tax citizens and property beyond the borders of the city, and the taxation without representation that results, is so unprecedented, that appellants have been unable to find any cases where it has been attempted in the manner in which it has been attempted here. But if the allegations and facts advanced by appellants have any merit, is there any doubt that substantial questions of the violation of Federal Constitutional rights are involved?

It might be helpful to divide the alleged violations of Federal Constitutional rights into three statements:

1. Sections 33950-33954 of the California Health and Safety Code attempt a completely uncontrolled, absolute delegation, and indeed abdication of legislative authority and responsibility by the California legislature to another agency, in derogation of due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment.

2. Assuming *arguendo* that the legislature may constitutionally delegate the legislative discretion delegated by Sections 33950-33954, it cannot do so to a partisan body that has a heavily prejudiced and vested interest in the outcome of the exercise of the discretion delegated, without violating the due process and equal protection provisions of the Fourteenth Amendment.

3. In any event, the legislature may not delegate authority where the ultimate result is *taxation with-*

out representation, in violation of the due process and equal protection provisions of the Fourteenth Amendment.

After a review of the decisions of this Court in the area involved, appellants suggest that the approach to the questions presented here is perhaps best stated in *Crowell v. Benson,* 285 U. S. 22, 57: "A state may distribute its powers as it sees fit, provided only that it acts consistently *with the essential demands of due process* . . ." (Appellants' emphasis). The court has repeatedly held also that when a tax is levied, the taxpayer involved must have been afforded an opportunity to be heard. *McGregor v. Hogan,* 263 U. S. 234, 237, and frequently cited *Londoner v. Denver,* 210 U.S. 373, 385, in which the Court commented: "Where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings . . . . the taxpayer have an opportunity to be heard." Another case that might be cited is *Senior v. Braden,* 295 U. S. 422, 429: "The validity of the tax under the Federal Constitution has been challenged. Accordingly we must ascertain for ourselves upon what it was levied." And in line with cases cited earlier herein, "Our concern is with realities, not nomenclature."

6. Los Angeles City Ordinance 113231, Approving the Bunker Hill Urban Renewal Project 1-B Plan, Violates the Equal Protection of the Laws Provision of the Fourteenth Amendment in That It Requires Owner-Participants in the Project to Pay Their Pro Rata Share of the Cost of Site Improvements, but Does Not Require Developers Who Purchase Property Within the Preject to Do So.[14]

Under the Bunker Hill Urban Renewal Project Plan, owners of property within the Project area who wish to become owner-participants in the Project, are required to pay the cost of any demolition of improvements on their property and of clearing and levelling, etc, *plus* a pro rata share of the cost of site improvements to be made within the Project. (Final Plan, Paras. D4(1), B1(c) and B2(c), quoted in footnote "6" to California Supreme Court Opinion. See pages 52-53 Apdx. "B", Aps. J. S.) But developers who purchase property within the Project from the Agency are *not* required to pay any costs of demolition, grading, levelling, etc., or their pro rata share of the cost of the site improvements. The only requirement is that they shall pay "fair value", for the property. (Para. C6 of Final Plan quoted pp. 22-23 Aps. J. S.)

Argument.

It is appellee's (the Agency's) contention that "fair value" includes *per se* the cost of site improvements, demolition, clearing, levelling, etc. This contention has been sustained by the lower courts. (Calif. Supr. Ct. Op. p. 61, Apdx. "B", Aps. J. S.) It is appellants'

[14]See footnote 4, p. 11.

contention that "fair value" can *not* be construed as automatically including the cost of demolition, etc., and the cost of site improvements; that while "fair value", or "fair market value", as it is often termed, may have some reasonable meaning in specifying the *total* worth of a piece of property and in insuring that property within the project is sold at its true worth, *it is meaningless as to what share of site improvements, if any of their cost, and of demolition, grading expenses, etc., are specifically included.* It need only be pointed out that the "fair value" (the market value) of a piece of property may be *less* than the cost of site improvements (*i.e.*, public improvements) assessed against it. Public records are replete with instances of where owners unable to sell their property for the cost of public improvements assessed against it, have allowed the property to go by default into public ownership.

Anyone who has dealt in real property, indeed the average home owner, is well aware of the possibility, if not probablity, that public improvements assessed against their property will not necessarily or automatically increase the value of the property by the amount of the improvement assessment. Consider a person owning a home or piece of property that has a market value of $20,000. Public improvements, such as street paving, sidewalks, curbs, a sewer, street lighting, etc., are installed in the vicinity, and $2,000 of the cost assessed against the property. Can the property now *automatically* be sold for $22,000, or more? Is its "fair market value" now automatically at least $22,000? Of course not. The amount of the cost of the improvements assessed against the property may or may *not* be recovered. But if the "fair value," the market value, is

less than $22,000, it certainly cannot be said that a purchaser for *less* than $22,000 is paying the *full* cost of the improvements. Rather, the seller is absorbing all or part of their cost. And, it is submitted, this is exactly what is occurring in the case of the Bunker Hill Project.

The Agency has estimated that the cost of acquiring property within the Bunker Hill Project (*i.e.* the total Project cost) will be $74,181,180, and that it will receive from sale of the property at its "fair value", $42,785,000. (Agency's Respondents Brief in the California appellate courts, pp. 52-53.) Thus, the property will be sold for approximately 42% of its cost. In the cost of the property the Agency properly includes the cost of site improvements, estimated (p. 52) at $4,599,500 and $2,435,372, or a total of over seven million dollars, and demolition and clearance costs of $2,951,000, along with the actual purchase price of the property, survey and planning costs, "property acquisition expenses", etc. and what might be termed "general overhead" expenses. But obviously, when the property is sold for 42% of its cost, all of these costs of acquiring the property and preparing it for sale, cannot be included in the selling price (that is, in its "fair value"). Which costs then are included? Are the costs of the site improvements and demolition included, and some of the other costs left out? Or are others costs included and the cost of site improvements and demolition, etc. left out? Who is to say? Appellants submit that the only reasonable answer, if there can be a reasonable answer to such a question, is that only *forty-two percent* of each of the costs, including *forty-two percent* of site improvements, demolition and grading, etc. costs, are included, and that the balance of *fifty-eight percent* is

being absorbed by the government grants and bond financing to be repaid from taxes, that make the Project possible. But, if this is the case, then the developer purchasing property in the Project pays only *forty-two percent* of his pro rata share of the cost of site improvements, demolition, grading, etc., and owner participants who are required to pay their *full* share of these costs, are clearly discriminated against and deprived of equal protection of the laws.

One of the most conclusive refutations of appellee's contention that the "fair value" price at which property in the Bunker Hill Project must be sold to developers *includes,* and developers purchasing the property therefore will pay a pro rata share of the cost of site improvements, is the fact that the Agency has already offered for sale two large blocks of property within the Project *before* any site improvements (or any substantial part of them) have been made. Bids received for the first parcel were rejected as too low. The sale of the second parcel is being completed at a negotiated price. (Los Angeles Times, Oct. 14, 1963 and Jan. 30, 1964.) How could the cost of site improvements that have not been made, and the actual cost and full nature of which are indefinite,[15] have been included in either transactions?

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[15]That site improvements which the Agency estimated in 1959 would cost some seven million dollars (*supra*), would today cost substantially more, is hardly arguable. Also in any large redevelopment project where, as in the Bunker Hill Project, the final use and development of much of the land has not been determined (see "Proposed Land Use" map, p. 3 of Project Plan; note various large areas marked for "alternate" uses), ultimate changes in land use will surely require major changes in site improvements. Typically, the grading plan for the Project, a very major part of the site improvements, is labelled "Tentative" in the Project Plan (p. 17 of Plan).

On pages 22-23 of their Motion to Dismiss or Affirm, appellees contend (as they did in their Respondent's Brief in the California appellate courts, pp. 206-207, which appear as pp. 26-27 of Apdx. "C", Aps. Mot. D/A) that "Under the Final Plan, owner participants are required to assume financial responsibility for their pro rata share of the cost of public site improvements *to the extent it results in a net benefit to the re-use value of their land*". (Aps. Mot. D/A p. 22, third Para. under Pt. 4, Emphasis added.) The italicized words are a creation of appellee, an interpretation. They are to be found nowhere in the Final Plan as adopted by the City Council. Section D4a(2) on page 12 of the Plan states simply that owner-participants "shall assume financial responsibility for their pro rata share of the costs of the necessary site improvements". If "necessary site improvements" refers to anything other than *all* site improvements to be undertaken as an essential part of the Project, nothing in the Plan says so or even infers so. Thus, a literal reading of this requirement of the Plan is that owner-participants shall pay a pro rata share of the cost of *all* site improvements to be undertaken as a part of the project, not just those that may *benefit* the owner-participant's property.

Assuming *arguendo* appellee's interpretation, *who* determines what improvements among all the various site improvements will benefit a particular property of a would-be owner-participant? Who determines the method of calculating the dollar amount by which they will benefit it, and thus the share of the cost of the improvements an owner-participant must pay? The answer, of course, is the Agency—and *only* the Agency.

which must be considered as having a prejudiced interest in recovering from an owner-participant as much as possible of the cost of any site improvements, and in making as many site improvements as possible at the expense of owner-participants. (Fair as the Agency might attempt to be, it has to be considered that such prejudice could and even does exist.) And what protection or recourse does an owner-participant have against such prejudice, or against what he may consider an excessive pro rata assessment regardless of the reason? None. He is completely at the mercy of the Agency. There is no opportunity for an owner-participant to protest. The Plan contains no provision for a hearing or for judicial review. An owner participant either accepts the Agency's idea of what site improvements benefit his property, and how much of their cost he should pay, or he is not permitted to participate. And this is the most *favorable treatment* an owner-participant can expect. Yet it requires the acceptance of an interpretation not expressed in the Plan but only suggested by appellees. If the provisions of the Plan are followed *without the addition of appellee's interpretation,* then owner-participants are required to pay a pro rata share of the full seven million dollars or more of site improvements contemplated by the Agency.

It is noteworthy that nothing in the Plan or Ordinance approving it, suggests that the language of the Plan be interpreted as appellees wish to do. If it were intended that owner-participants pay only a pro rata share of those improvements that *benefit* their property, surely some standards would, and *should* have been provided in the Plan or Ordinance to guide the

Agency in determining which of the many, varied and extensive site improvements contemplated would benefit or not benefit a particular property, and if they benefited it, to what extent. And surely there would, and *should* have been some means of protest and judicial review provided for owners who might not agree with the Agency's determination of which, if any, site improvements benefited their property, or the Agency's determination of the *extent* of the benefit. Failing the inclusion in the Plan or Ordinance approving it of any such standards, or any such provision for a hearing or judicial review of assessments levied by the Agency, if the interpretation suggested by appellees is adopted, then, it is submitted the Plan and Ordinance are unconstitutionally uncertain, and further unconstitutional because of delegation of legislative discretion without essential standards to control its exercise, and indeed the delegation to the Agency of confiscatory power, and because owner-participants are not afforded a hearing on, or judicial review of assessments that may be made against their property by the Agency.

The indefinite, if not arbitrary methods of assessing site improvement costs against owner-participants are indicated by the testimony of Mr. Bill, Executive Director of the Agency at the time, quoted and described by appellee on page 23, Appendix "C" of Appellee's Motion to Dismiss or Affirm, to wit: that assessments for site improvements against the property of owner-participants will not be made by the Agency on a square foot basis, or a percentage basis, but on an "equitable" basis. Appellants submit that intent to be "equitable" is an indefinite, and from a constitutional or legal viewpoint unacceptable method of insuring justice.

It is also submitted that whether an owner-participant pays a pro rata share of the full seven million dollars or more of site improvements contemplated, or a pro rata share of only those improvements that benefit his property, owner-participants will still be discriminated against when compared to developers purchasing Project property. As argued *supra* it simply cannot be said (as appellees say on page 206 of their Respondent's Brief in the California courts, quoted page 26, Appendix "C" of Appellee's Motion to Dismiss or Affirm) that a developer who pays "fair value" for Project property will automatically be paying for any site improvements that *benefit* that property, and therefore will be in the same position as owner-participants. Among the arguments advanced *supra* that particularly refute this are: (1) The Agency is already selling land in the Project before any site improvements (or any substantial amount of them) have been commenced; (2) The Agency itself has estimated that the "fair value" sale price of Project property will recover only *forty-two percent* of the cost of acquiring the land and preparing it for sale, *including the cost of site improvements;* and (3) as regards demolition and clearing costs, owner-participants are required to pay the *full* cost of these *whether or not they benefit their property* (or are only required by the Agency for aesthetic or other reasons) while purchasers of Project property (under the argument advanced by appellee) would pay such costs *only* if they *benefited* the property and increased its "fair value".

On page 207 of Respondent's brief in the California appellate courts (quoted p. 27, Appx. "C", Aps. Mot. Dismiss/Affirm) appellee argues that the Agency obviously could not sell property for *more* than its "fair

market value," apparently inferring that it would be impractical for the Agency to add a pro rata share of the cost of site improvements to the "fair value" sale price. Granted. But there is another, simple means of eliminating the discrimination against owner-participants created by the requirements in the present Plan that they must pay for site improvements, demolition, clearing, etc., while developers purchasing Project property are exempted from these costs—and that is: eliminate these requirements. As appellants have pointed out (P. 123, App. O. B. Calif. App. Cts.) and neither appellee or the courts have refuted, nothing in California or Federal urban renewal law requires that owner-participants in a redevelopment project shall be charged any part of the cost of site improvements, or for costs of demolition, clearing, etc. in connection with their property. It is not for appellants to suggest any of a number of more equitable approaches to the problem involved, but if the Agency were to assume all costs of site improvements, demolition, clearing, etc. and in dealing with an owner-participant credit him with a fair acquisition cost for his property, and then sell the property back to him at the same "fair value" charged developers, owner-participants and developers would be treated identically.

The approach suggested in the last sentence of the paragraph preceding underscores an important point, that except as owners, or owner-participants are set apart by the arbitrary and discriminatory provisions of the present Plan, there *is* no difference between an owner and a developer. Both belong, for purposes of the law, to the same class. Both are prospective developers of Project property, who if permitted to own

purchaser or owner-participant, must both agree and conform to the same conditions and regulations established by the Agency.

Jurisdiction.

A review of applicable decisions by this Court reveals an understandable reluctance of the Court to interfere with assessment procedures adopted by the states. But it also discloses that this Court has not hesitated, where justified, to afford a judicial review to those claiming that they have been deprived of their rights under the Federal Constitution, and in particular of equal protection of the laws as guaranteed under the Fourteenth Amendment, by unequal or discriminatory assessment laws and practices within the states. *Valley Farms Co. v. Co. of Westchester,* 261 U. S. 149, 154, *Fort Smith Light Co. v. Paving District,* 247 U. S. 387. *Wheeling Steel Corp. v. Glander,* 337 U. S. 562, 572, in which the Court stated:

> "It seems obvious that appellants were not afforded equal trestment, and the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction, but solely because of the different residence of the owner."

And a case often quoted, *Gast Realty and Investment Co. v. Schneider Granite Co.,* 240 U. S. 55, 58, wherein the Court pointed out:

> "If the law is of such character that there is no reasonable presumption that substantial justice will be done but the probability is that the parties will be taxed disproportionately to each other and to the benefits conferred the law cannot stand against the complaint of one so taxed in fact."

Conclusion.

If a substantial Federal Constitutional question is posed by a challenge to a state statute on grounds that it results in *taxation without representation*, if a substantial Federal Constitutional question is raised by state legislation that authorizes a city council whose members are under oath to represent the best interests of the citizens of the city who elect them and whom they represent, to appropriate to pay for a city redevelopment project by merely designating the council a state agency, tens of millions of dollars of taxes belonging to a county, school district, a flood control district, and a water district, more than half of whose taxpayers (in the case of the county, flood control and water districts, and in the case of the school district many of whose taxpayers) reside, and their property that is taxed is located, beyond the city limits and the jurisdiction of the city council, then such a Federal question (question No. 1 *supra*) is herein presented to this Court.

With regard to the question of unequal and discriminatory assessments resulting in denial of due process of law, the second question posed herein, appellants submit that as cited *supra* this Court has reviewed such a question on numerous occasions. And if appellants correctly interpret the Court's thinking as specifically expressed in a number of these decisions, it is that there can be no hard and fast rule to cover all such cases, but that the individual facts in each case must be examined and weighed. *Atchison, etc. Railway Co. v. Public Utilities Commission*, 346 U. S. 347, 353; *Nashville, etc. Railway v. Walters, Commissioner of Highways*, 294 U. S. 405, 415. Certainly, too, there is raised a question worthy of this Court's consideration,

where it appears that the owners of property within a redevelopment project, who are forced to participate in the project or have their homes and businesses taken from them through condemnation, are assessed, if they participate, costs that developers who become participants purely for the sake of profit, are not assessed.

It is submitted that substantial Federal questions are presented by appellants' appeal, and that these questions were raised in the California courts and passed on by the California Supreme Court in such manner as to permit this Court to take jurisdiction. It is therefore urged that appellee's Motion to Dismiss or Affirm be denied, and that appellants be afforded a plenary review of the questions they have presented.

Respectfully submitted,

PHILL SILVER,

Attorney for Appellants Henry Goldman and May Goldman.

MOTION FILED

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IN THE

Supreme Court of the United States

October Term, 1964.

No. 426

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

Motion for Leave to File a Brief as Amici Curiae in Support of the Jurisdictional Statement of Henry Goldman and May Goldman.

and

Brief of Amici Curiae in Support of Jurisdictional Statement of Henry and May Goldman.

AUSTIN CLAPP,
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Amici Curiae.

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IN THE

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Appellee.

Motion for Leave to File a Brief as Amici Curiae in Support of the Jurisdictional Statement of Henry Goldman and May Goldman.

John Swigart, Robert T. McInerny, Janet McInerny Bekins (formerly Janet M. Morse) and the Briggs Apartment Hotel Company hereby respectfully move for leave to file a brief Amici Curiae in support of the Jurisdictional Statement filed by Henry Goldman and May Goldman in this case. The consent of the attorney for the appellants has been obtained. The consent of the attorneys for the appellee has been requested but has been refused.

The interest of the moving parties in this case arises from the fact that they are the owners of real property or interests therein located within the project boundaries of the proposed redevelopment project. Mr. Mc-

Inerny, Mrs. Bekins (formerly Mrs. Morse), and the Briggs Apartment Hotel Company were respondents to the *in rem* action filed in the California courts which gave rise ultimately to the decision of the Supreme Court of the State of California sought to be reviewed. Mr. Swigart is the son of Clara M. Swigart, now deceased, who was also a party respondent in those proceedings. The moving parties herein have been actively opposing the proposed redevelopment project for over nine years, and they will be vitally affected by the decision since their land is included in the project area.

The brief which the moving parties seek permission to file will be limited to the question of the constitutional validity of the California statutes relating to the financing of the redevelopment project. The moving parties are familiar with the arguments that will be made by the appellants and believe that the brief which they seek to file will contain a more complete argument on the above limited issue.

Respectfully submitted,

AUSTIN CLAPP,
CHARLES E. MCCLUNG,
Amici Curiae,

IN THE

Supreme Court of the United States

October Term, 1964.

No. .....

HENRY GOLDMAN and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

Brief of Amici Curiae in Support of Jurisdictional Statement of Henry and May Goldman.

I.

INTRODUCTORY STATEMENT.

The appellants in this case contend that provisions of the California State Constitution and of the statutes of California relating to the financing of redevelopment projects violate the Fourteenth Amendment of the Constitution of the United States.

If the appellants are correct, the determination of the Federal question is of vital importance not only for the litigants but for virtually all the redevelopment projects in the State of California. If the financing provisions are invalid, thousands of property owners

and bond holders are directly affected. The ramifications of the invalidity of the California statutes are so far reaching that it is respectfully submitted that review should be granted to determine the Federal question involved.

II.

QUESTIONS PRESENTED.

A. May the State of California vest power in the City Council of the City of Los Angeles to divert taxes from other taxing agencies outside of the City in order to pay for the cost of a redevelopment project located within the territorial boundaries of the City without first obtaining the consent of the other non-City taxing agencies?

B. Assuming that the State may constitutionally vest power in the City Council to divert taxes from non-City taxing agencies without the consent of such agencies, may such a power be delegated to a partisan administrative body, to wit, ~~to~~ the members of the City Council of the City of Los Angeles who owe their office and allegiance to the people of the City and not to the constituents of the other taxing agencies?

III.

ARGUMENT.

A. The Provisions of the California Constitution and Statutes Which Vest Power in the City Council of the City of Los Angeles to Divert Taxes From Other Taxing Agencies Located Outside of the City in Order to Pay for the Cost of a Redevelopment Project Within the City Without the Consent of the Non-City Taxing Agencies Constitutes Taxation Without Representation in Violation of the Fourteenth Amendment of the Constitution of the United States.

Since the end of World War II, many states with financial assistance from the Federal Government have embarked upon enthusiastic urban renewal and redevelopment programs. The California Act was adopted in 1945. (Cal. Stats. 1945, c. 1326, p. 2478.) Since the entry of the Federal Government into this field, the extent of the participation of the Federal Government has essentially been limited to a contribution of two-thirds of the net project cost. See 42 U. S. C. 1441 *et seq.* In order to make the redevelopment programs attractive to the local taxpayers, the states have adopted various methods designed to "fund" the local share of the project cost.

The State of California attempted to solve this problem in a rather unique manner. In 1952 a constitutional amendment was adopted which authorized the Legislature to provide for the allocation of a portion of the *ad valorem* real property taxes in the project

area to the local redevelopment agency to pay for the costs of the project. (California Constitution, Art. XIII, Sec. 19. See Appendix "A".) Prior to the adoption of the constitutional amendment, the California Legislature adopted Sections 33950 through 33954 of the Health and Safety Code providing for the tax allocation. (See Appendix "A".) These legislative provisions were validated by the constitutional amendment.

Essentially the California statutes provide that the redevelopment plan may include a provision that if after its adoption the assessed value of the taxable property in the project area increases the taxes levied on such property are divided between the appropriate taxing agencies and the redevelopment agency. The other taxing agencies receive that portion of the taxes which would have resulted from the application of their current rate to the former assessed valuation, and the additional tax funds produced by the application of the tax rate to the increased valuation are paid to the redevelopment agency to repay indebtedness incurred in financing the project.

The redevelopment plan adopted by the City Council of the City of Los Angeles contains a provision for such tax allocation. At every stage of the proceedings in the California courts, the appellants have contended that the City of Los Angeles cannot divert tax funds from the non-City taxing agencies unless they first obtain the consent of these agencies. Unless the

statutes are construed to require such consent, appellants have contended that the Statutes violate the Fourteenth Amendment to the Constitution of the United States.[1]

The Supreme Court of the State of California has rejected the contentions of Mr. and Mrs. Goldman and has held the constitutional provision and the statutes enacted pursuant thereto to be valid. (See Appendix "B" to Appellants Jurisdictional Statement, pp. 73-76.) Thus, the California Supreme Court has held that under the law of the State of California the City Council of the City of Los Angeles may divert taxes from

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[1]The amended joint pre-trial statement read in part as follows:

"Section 33950 through 33954 of the California Health and Safety Code, which authorized the inclusion in the Final Plan of Section C.8.d. (1) and (2) providing for the allocation of the increase in taxes on the property in the Project Area due to the redevelopment thereof to pay the principal and interest on bonds issued by the Agency to finance, in part, such redevelopment, are void for uncertainty in violation of the due process clause of the Fourteenth Amendment and constitute an unlawful delegation of power belonging to other taxing agencies receiving taxes from the property within the Project Area because said sections do not clearly provide that the consent of such other taxing agencies must first be obtained before such tax allocation may be made.

Sections C.8.d. (1) and (2) of the Final Plan provide for an illegal appropriation by the City Council of funds belonging to other taxing agencies in that they provide for such tax allocation without first requiring the City Council to obtain consent to such allocation from other taxing agencies." [C. T. 575.]

the County of Los Angeles (and other taxing agencies) to pay for a project located within the City of Los Angeles.

There are 6,038,771 people in the County of Los Angeles.[2] There are 2,470,015 people in the City of Los Angeles.[3] At least 3,559,656 people are not the constituents of the City Council of the City of Los Angeles. These people do not elect the City Councilmen and have no popular control over their actions. According to the opinion of the California Supreme Court, *ad valorem* real property taxes belonging to these 3,559,656 people can be diverted by the City to pay for a project located within the territorial boundaries of the City.

We suggest that the power to divert taxes is essentially identical to the power to tax in the first instance. Taxing agencies tax to fulfill the financial needs of Government, and any diversion of taxes requires that taxes elsewhere be increased to meet these needs.

We have been taught that the evil of taxation without representation is one of the principal reasons we chose to exist as a separate nation. No principle is more firmly embedded in our political philosophy. It is an axiom of constitutional law that a state may not tax real property physically located outside of its bor-

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[2]County and City Data Book, 1962, *U. S. Department of Commerce, Bureau of the Census,* page 32, table 2, item 3.

[3]*Ibid.,* page 476, table 6.

ders. (*Senior v. Braden,* 295 U. S. 422, 429.) We suggest that the universal acceptance of this precept is caused not so much by the acceptance of the Austinian concept of ultimate sovereignty as it is by the simple maxim that those who are to be taxed should have something to say about the imposition of the tax.

Whether a municipality may tax real property outside of its jurisdiction would seem to be a matter of first impression. We are not unaware of the numerous authorities holding that the state has plenary power over its municipalities. (*Stewart v. Kansas City,* 239 U. S. 14; *Kies v. Lowrey,* 199 U. S. 233.) But this plenary power is subject to certain limitations particularly when exercised to impair voting rights. (*cf.*, *Gomillion v. Lightfoot,* 364 U. S. 339.)

The respondents argued in the court below that under State law the City Council of the City of Los Angeles acts as a "State agency." But nomenclature must give way to reality. The City Council of the City of Los Angeles is elected by and acts for the people of the City, and they are empowered by State law to divert taxes belonging to 3,559,656 people located outside of the City. To suggest that the City Council is acting as a "State agency" and that these disenfranchised non-City taxpayers should seek relief in our State Capitol is patently illusory.

B. Assuming Arguendo That the Legislature May Delegate the Authority to Divert Taxes to the Los Angeles City Council as a "State Agency," This Delegation of Authority to a Partisan Agency Not Responsive to the Will of All the People Affected Violates the Fourteenth Amendment to the Constitution of the United States.

Members of the City Council of the City of Los Angeles are under oath to represent the best interests of the taxpayers of the City. They have a vested and partisan interest in the affairs of the City. It might be urged that they are duty bound to their constituents to utilize funds belonging to other non-City taxing agencies to the maximum extent possible in order to reduce the ultimate cost to the taxpayers of the City. It might be argued that to do otherwise would be in violation of their oath of office.

It is conceivable that a city which imposes no real property taxes could adopt a redevelopment plan within its territory and shift the entire cost to other non-city taxing agencies.[4]

This Court has held that the delegation of authority to a partisan and interested faction is arbitrary and results in the denial of rights safeguarded by the Fourteenth Amendment to the Constitution of the United States. (*Carter v. Carter Coal Company,* 298 U. S. 238, 311.) It is true that the *Carter* case has received a judicial battering. (*Sunshine Anthracite Coal Company v. Atkins,* 310 U. S. 381.) However, the

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[4]The Los Angeles County Taxpayers Guide for 1963, pages 86-88, indicates that there are twenty cities in Los Angeles County without any municipal tax rate, including such major cities as Palmdale, Duarte, Paramount, Temple City, Norwalk and La Puente.

principle of the *Carter* case that authority may not be delegated to a partisan agency was correct. Where the decision went astray was in the assumption that the Bituminous Coal Commission was a partisan agency.

The delegation of authority to an agency to regulate is perfectly proper. (*Agricultural Prorate Commission v. Superior Court,* 5 Cal. 2d 550) [delegation of authority to Agricultural Prorate Commission to regulate marketing conditions in the lemon industry upon petition filed by two-thirds of lemon growers affected held valid.] But could California empower the Agricultural Prorate Commission to regulate the growers of grapefruit and oranges at the request of and by petition filed by the lemon growers? Could Congress delegate to the Bituminous Coal Commission whose members are chosen largely by the coal industry power to regulate the steel industry or the automobile industry? The taxpayers of the County of Los Angeles have nothing whatever to say about the makeup of our Los Angeles City Council. To delegate to this Council the authority to make the determinations affecting the people of the County without the consent of the people of the county is in derogation of the Fourteenth Amendment to the Constitution of the United States.

Conclusion.

It is respectfully submitted that jurisdictional statement filed by Henry Goldman and May Goldman presents substantial Federal questions and should be given plenary review.

Respectfully submitted,

AUSTIN CLAPP,
CHARLES E. MCCLUNG,
Amici Curiae,

APPENDIX A.

California Statutes and Constitutional Provisions Involved.

ART. XIII, SECTION 19 OF THE CALIFORNIA CONSTITUTION

Sec. 19. All property in a redevelopment project established under the Community Redevelopment Law Act as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of such ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and such taxes (the word "taxes" as used herein shall include, but shall not be limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon such taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to

the effective date of such ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise included after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(b) That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph designated (a) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of

the respective taxing agencies as taxes on all other property are paid.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph designated (b) hereof may be irrevocably pledged for the payment of the principal of and interest on said loan, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

All of the provisions of the Community Redevelopment Law, as amended in 1951, which relate to the use or pledge of taxes or portions thereof as herein provided, or which, if effective, would carry out the provisions of this section or any part thereof, are hereby approved, legalized, ratified and validated and made fully and completely effective and operative upon the effective date of this amendment.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33950-33954*

§ 33950. *Division of taxes levied; allocation.* Any redevelopment plan may contain a provision that taxes, if any, levied upon taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(1) *Portion of taxes based on last assessment roll before establishment of district.* That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of said taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agency, last equalized prior to the effective date of such ordinance, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies as taxes by or for said taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of such ordinance but to which such territory has been annexed or otherwise in-

*Renumbered in 1963 as 33670, 33671 and 33672, Section 33954 repealed.

cluded after such effective date, the assessment roll of the county last equalized on the effective date of said ordinance shall be used in determining the assessed valuation of the taxable property in the project on said effective date); and

(2) *Portion of taxes in excess of amount.* That portion of said levied taxes each year in excess of such amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by such redevelopment agency to finance or refinance, in whole or in part, such redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in such project as shown by the last equalized assessment roll referred to in paragraph numbered (1) hereof, all of the taxes levied and collected upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies. When said loans, advances, and indebtedness, if any, and interest thereon, have been paid, all moneys thereafter received from taxes upon the taxable property in such redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

§ 33951. *Pledge of tax revenues for payment of principal and interest.* In any redevelopment plan or in

the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes mentioned in paragraph numbered (2) of Section 33950 may be irrevocably pledged for the payment of the principal of and interest on said loans, advances, or indebtedness.

§ 33952. *Taxes defined.* As used in this article the word "taxes" shall include, but without limitation, all levies on an ad valorem basis upon land or real property.

§ 33953. *Taxation of property leased by agency.* Whenever property in any redevelopment project has been redeveloped and thereafter is leased by the redevelopment agency to any person or persons or whenever the agency leases real property in any redevelopment project to any person or persons for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely upon the assessed value of his or its leasehold interest.

§ 33954. *Effective date of article; approval of constitutional amendment.* This article shall become operative only if the people approve the constitutional amendment of the 1951 Regular Session of the Legislature adding Section 19 to Article XIII of the Constitution of the State and in such case at the same time as such constitutional amendment takes effect.

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IN THE

Supreme Court of the United States

October Term, 1964

Case No. 416

HENRY GOLDMAN, and MAY GOLDMAN,

Appellants,

vs.

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA,

Appellee.

On Appeal From the Supreme Court of the State of California.

Opposition to Motion of Amici Curiae for Leave to File Brief in Support of Jurisdictional Statement of Henry and May Goldman.

Introduction.

Opposition is hereby made to the motion of John Swigart, Robert T. McInerney, Janet M. Bekins and the Briggs Apartment Hotel Company for leave to file a brief *amici curiae* in support of the Jurisdictional Statement filed on behalf of Henry and May Goldman (the "Goldmans") by Phill Silver, Esq.

The grounds of opposition are as follows:

1. Said parties failed to raise and/or preserve any substantial federal questions in the proceedings before the state courts. In order to maintain some semblance of active participation in this litigation, they, and their attorneys, now seek to participate as *amici curiae*.

2. Counsel for the moving parties in the state court proceedings showed no enthusiasm for the types of issues they now seek to support. For example, Austin Clapp, in the course of final argument before the trial court, bluntly indicated his disagreement with the contentions of Mr. Silver. See Appendix "A" hereto.

3. There is a defect of jurisdiction with respect to the issues raised in the proposed brief submitted on behalf of *amici curiae* in that the Goldmans failed to raise and/or preserve the federal questions sought to be asserted by the *amici curiae*.

4. The position advanced by the *amici curiae* is wholly without merit.

ARGUMENT.

I.

A Fatal Jurisdictional Defect Exists as to the Points Asserted by Amici Curiae in that the Appellants Whom Amici Curiae Seek to Support Failed to Raise and Preserve the Questions Before the State Courts.

Amici curiae seek to support the Goldmans' Jurisdictional Statement by providing additional briefing of a contention that Article XIII, § 19 of the California Constitution (Appendix "A" to the Motion and Brief of *amici curiae*) violates the Fourteenth Amendment to the United States Constitution.

Parenthetically, it should here be explained that California Health and Safety Code §§ 33950 through 33954 provide a method for financing redevelopment projects. They provide that any redevelopment plan may provide for the issuance of tax allocation bonds, which would be paid from certain increases in tax revenue obtained from the project area. That portion of the taxes levied on the project area attributable to the increases in the assessed valuation of the project area subsequent to the adoption of the redevelopment plan would be allocated to the redevelopment agency to pay the principal of and interest on indebtedness incurred by the redevelopment agency to finance or refinance the redevelopment project.

The mechanics of this process are as follows: The various taxing agencies having jurisdiction to levy and collect taxes from a project area do so in their normal manner and at their current rate. The proceeds of the taxes levied are then divided between the taxing agencies and the redevelopment agency. The various

taxing agencies receive the amount produced by applying their current tax rate to the assessed valuation of the project area as shown on the last equalized assessment roll prior to the adoption of the redevelpment plan for the area. If there has been no increase in valuation since that time, such taxing agencies receive the entire tax proceeds. However, the tax funds produced by the application of the current tax rate of the various taxing agencies to any increase in valuation beyond the assessed valuation as shown on such tax roll are allocated to the redevelopment agency to pay the obligations incurred in executing the project.

These provisions of the Health and Safety Code were enacted to become effective only if a constitutional amendment were subsequently adopted authorizing and ratifying them. In 1952 an amendment to the California Constitution was adopted by the people of the state adding Article XIII, Section 19 thereto, which specifically authorized and ratified Sections 33950 through 33954 and empowered the Legislature to enact legislation containing the exact provisions of Sections 33950 and 33951, which are the operative sections providing for the tax allocation.

The Goldmans have asserted their Jurisdictional Statement that Article XIII, § 19 and California Health and Safety Code §§ 33950 through 33954 violate the due process and equal protection clauses of the Fourteenth Amendment (Goldman Juris. St., p. 3).

The Goldmans did not contend before th trial court that Article XIII, § 19 violated the Fourteenth Amendment to the United States Constitution. In an Amendment to the Joint Pre-Trial Statement filed in the *Gold-*

man action in the trial court, the Goldmans raised the contention that California Health and Safety Code §§ 33950-33954 violated the due process clause of the Fourteenth Amendment to the United States Constitution [C. T., p. 575, line 26 to p. 576, line 12].

However, the Goldmans did not preserve this question by reasserting it in their brief before the California appellate courts. An examination of the Goldmans' brief before the California appellate courts reveals that they did not at any time make their attack on §§ 33950-33954 in terms of invalidity under the United States Constitution, and at no time did they contend that Article XIII, § 19 of the California Constitution violated the Fourteenth Amendment to the United States Constitution, or any other provision thereof. (See Goldman Op. Br. below, esp. pp. 27-50).

The only reference in the Goldmans' appellate brief below to their trial court contentions here involved, was a recitation of the contentions of both parties below together with a partial recitation of the findings of fact and conclusions of law of the trial court (Goldman Op. Br. below, pp. 3-23). This was merely a matter of setting the stage for the contentions to be made on appeal. These contentions, however, insofar as here relevant, were not reasserted in the brief. The argument, points and authorities were in terms of California law and the California Constitution. At no time was the suggestion made that any of these provisions were invalid under the United States Constitution.

The questions here raised by *amici curiae* were raised before the California Supreme Court only in an *amicus* brief by a party not before this Court. The California Supreme Court did not expressly pass on the questions

[see *In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 37 Cal. Rptr. 74 (1964).]

The situation, then, is that at no time did the Goldmans contend before the California courts that Article XIII, § 19 violated the Fourteenth Amendment to the United States Constitution. The Goldmans did contend in the trial court that California Health and Safety Code §§ 33950-33954 violated the Fourteenth Amendment of the United States Constitution, but they failed to reassert even that contention before the California appellate courts.

Under long-settled California practice, the failure to assert a point in the appellants' opening brief on appeal waives the point, even though the point had been asserted before the trial court [*Roberts v. Krafts*, 141 Cal. 20, 25, 74 Pac. 281 (1903); *Mayne v. San Diego Elec. Ry. Co.*, 179 Cal. 173, 179, 175 Pac. 690 (1918); *Wheeling v. Financial Indemnity Co.*, 201 Cal. App. 2d 36, 44-45, 19 Cal. Rptr. 879 (1962)].

Accordingly, the California Supreme Court did not pass on the federal constitutional issue. [see *In re Redevelopment Plan For Bunker Hill*, 61 Adv. Cal. 1, 51-54, 37 Cal. Rptr. 74 (1964)].

The failure to raise and preserve the federal questions as to Article XIII, § 19 and California Health and Safety Code §§ 33950-33954 creates a fatal defect of jurisdiction [*Hulbert v. Chicago*, 202 U. S. 275, 280-281; *C.I.O. v. McAdory*, 325 U. S. 472, 477; *Chandler v. Manifold*, 290 U. S. 665].

Since the question which the *amici curiae* seek to support is not properly before this court because the appellants raising the question failed to preserve it be-

fore the California courts, it is submitted that the motion of said *amici curiae* for leave to file a brief should be denied.

II.

The Questions Raised by the Amici Curiae Are Not Substantial.

Amici curiae contend that Article XIII, § 19 of the California Constitution and California Health and Safety Code §§ 33950 through 33954 violate the Fourteenth Amendment to the U. S. Constitution in that they provide for "taxation without representation" and because the Council of the City of Los Angeles (the "City Council") was a partisan agency. These contentions are without merit and raise no substantial federal question.

A. The California Constitution and Statutes Do Not Provide for Taxation Without Representation.

The *amici curiae* contend that the power conferred on the City Council by Article XIII, § 19 of the California Constitution, and California Health and Safety Code §§ 33950 through 33954, as the local legislative body of the community, to adopt a redevelopment plan providing for tax allocation, provides for taxation of taxpayers in Los Angeles County, the Los Angeles County Flood Control District and the Los Angeles City School District, residing outside of the City of Los Angeles, by the City Council to pay the City's share of a strictly City project. Since these taxpayers are not represented on the City Council, the *amici curiae* contend that this constitutes taxation without representation. The *amici curiae* appear to recognize that the allocation of the tax funds to the Agency does not it-

self constitute a tax levied on these parties, but they contend that since the allocated funds will have to be made up from increased taxes outside of the Project Area, it in effect results in a tax levied by the City Council on persons residing outside of the City (Amici Brief, p. 8).

In other words, they are contending that since the City Council has been empowered in effect to remove part of the assessed valuation of the Project Area from the taxing jurisdiction of Los Angeles County, the Los Angeles County Flood Control District and the Los Angeles City School District, the taxes which would have gone to those entities must be replaced by higher taxes imposed on the remaining property therein. This increased taxation, it is contended, is in effect imposed by the City Council, because it performed the act which took away a portion of the tax base and thereby made the imposition of increased taxes by the other taxing entities necessary. These contentions are entirely without merit. It is obvious that the City Council is imposing no taxes on non-residents, and that increased taxes, if any, would be levied by the proper authorities.

It will be noted that the local legislative body, in this case the City Council, in no event actually levies any taxes on anyone by adopting a redevelopment plan providing for tax allocation financing. The effect of the tax allocation provisions is to allow the various taxing entities such as the City, the County, etc., to impose their current tax rate on the assessed valuation of a redevelopment project area as of the last equalized assessment roll prior to the adoption of the redevelopment plan. The proceeds thereof are collected by the County Tax Assessor and disbursed to the various taxing en-

tities in the usual way. However, the increase in valuation of the redevelopment project area is, in effect, not subject to taxation. The tax funds produced by the imposition of the current tax rate of the various taxing entities on this increase in valuation, while levied and collected in the usual way, is paid to the special fund of the redevelopment agency to pay that portion of project expenses not covered by the federal subsidy. (For a detailed explanation of the financing of the project herein, see Respondents' Brief below, pp. 51-57.) Rather than the imposition of a tax, this process is most nearly analogous to the granting of a tax exemption to the valuation increment resulting after the adoption of the redevelopment plan.

Redevelopment in California is not a matter of municipal concern, but rather, is a matter of state concern [California Health and Safety Code Sections 33040-33048, attached hereto as Appendix "B", *Fellom v. Redevelopment Agency,* 157 Cal. App. 2d 243, 247-248, 320 P. 2d 884 (1958); *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 459, 461-463, 346 P. 2d 457 (1959). See also *Housing Authority of the City of Eureka v. Superior Court,* 35 Cal. 2d 550, 219 P. 2d 457 (1950); *Drake v. City of Los Angeles,* 38 Cal. 2d 872, 243 P. 2d 525 (1952)]. Redevelopment projects are state projects adopted by state agencies to carry out state objectives [*Fellom v. Redevelopment Agency,* 157 Cal. App. 2d 243, 247-248, 320 P. 2d 884 (1958); *Andrews v. City of San Bernardino,* 175 Cal. App. 2d 459, 461-463, 346 P. 2d 457 (1959). Respondents' Brief below, pp. 15-18]. The expenditure of the tax allocation funds is therefore to pay the state's share of a state project. This procedure was

approved by the people of the State of California when they voted in favor of adding Article XIII, § 19 to the California Constitution. If this allocation were tantamount to the imposition of a tax it would certainly not be taxation without representation. Rather, it would be a state tax imposed by the people of the state upon themselves, as an efficient and effective means of coping with the state-wide problems created by slum and blighted areas.

It should be noted here that some sister states finance redevelopment in a quite similar way. New York, for example, follows a system whereirr a redevelopment company agrees to carry out the redevelopment plan, including clearance and construction of improvements. To aid in the carrying out of this procedure, the redevelopment company is granted a tax exemption for up to twenty-five years on the value of improvements representing an increase over the assessed valuation of the property acquired for the project [New York Constitution, Article SVIII, Section 2; New York Redevelopment Co. Law, Section 26]. This was upheld in *Murray v. La Guardia,* 291 N. Y. 320, 52 N.E. 2d 884 (1943), *cert. denied* 321 U. S. 771. See also *Land Clearance Authority v. St. Louis,* 27 S. W. 2d 58 (Mo. 1954); *Redfern v. Board of Comrs. of Jersey City,* 137 N.J.L. 356, 59 A. 2d 641 (1948), and *Dodge v. The Prudential Ins. Co. of America,* 343 Mass. 375, 179 N. E. 2d 234 (1961), wherein similar tax exemption provisions were upheld.

It will be noted that the end result of the New York system is substantially identical with that obtaining under Sections 33950-33954. Under the New York system, a private company takes a conveyance of the prop-

erty in the project area from the city, or is delegated the power of eminent domain to acquire the property directly, and undertakes to do all of the necessary work to execute the project at its own expense. The federal subsidy defrays part of the cost, and the tax exemption operates to defray the balance of the cost of site improvements, demolition, etc. In California, a state agency, the local redevelopment agency, acquires the property, does the necessary site preparation, and sells off the land for uses in accordance with the redevelopment plan. Since the agency would not be holding the property for any extended period, a straight tax exemption would not operate effectively. Therefore, an allocation is made to the agency of the funds which would have passed to it by way of savings due to a tax exemption under the New York system. In both cases, taxes are utilized as a means of defraying the cost of clearing out the slum and blighted conditions and putting in the site improvements which lead to the increased valuation. It is submitted that this is entirely reasonable and valid.

The contention of *amici curiae* that the City Council cannot, consonant with the United States Constitution, perform the act of adopting a redevelopment plan providing for tax allocation financing, because this in effect operates to make certain property semi-tax exempt, thereby increasing the taxes on the other property in the various taxing entities also levying taxes on the property so exempted, is clearly erroneous. If this were true, the City could never purchase property for any public purpose without the consent of the other taxing entities levying taxes thereon, because its purchase would make the property tax exempt, and would result

in an increase in taxes on other property within the other taxing entities. This obviously is not the law.

An analogous situation is found in the housing authority cases. Under the Housing Authorities Law (California Health and Safety Code Sections 34000, et seq.) cities are empowered to form housing authorities which may acquire land which then becomes tax exempt. This would appear to involve the same principle contended for by the *amici curiae*. The Housing Authorities Law, including the tax exemption, has been held valid [*Housing Authority v. Dockweiler*, 14 Cal. 2d 437, 94 P. 2d 794 (1939), and sister state cases cited therein at 14 Cal. 2d pages 448-449, and 454. See also *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N.E. 2d 193 (1939), wherein the question of whether or not a city could be deputed by the state as agent to represent all entities levying taxes on housing authority sites within the city regarding tax exemptions on the site and negotiation of contracts with the federal government as to such tax exemptions and related matters was answered affirmatively].

It is submitted that the contentions of *amici curiae* as to taxation without representation are without substance, and raise no substantial federal question.

B. The City Council May Constitutionally Be Empowered to Adopt Redevelopment Plans Providing for Tax Allocation Financing.

The contention of *amici curiae* that the California Legislature cannot delegate to the City Council the function of approving and adopting redevelopment plans in accordance with the standards set forth in the California Redevelopment Law (California Health and Safety Code § 33000 et seq.) for the redevelopment of slum

and blighted areas within the boundaries of the City of Los Angeles (the "City") to be financed in part by the issuance of tax allocation bonds, because the City Council is a "partisan agency" appears absurd on its face. This contention seems to be based upon the premise that the City Council would include provisions for tax allocation bonds, rather than providing for some other form of financing, which might be done by some less interested agency. Thus, *amici curiae* stated at page 10 of this proposed brief that the City Council would be duty bound to utilize funds "belonging to non-city taxing agencies" to the maximum extent possible.

Preliminarily, it should be noted that Article XIII, § 19 of the California Constitution and California Health and Safety Code §§ 33950-33954 provide that that *any* otherwise proper redevelopment plan may provide for tax allocation financing. Since any proper plan can be so financed, there would seem to be no basis for partisanship in approving a plan which provided for such financing.

It should further be noted, as set forth in subdivision A, above, that redevelopment in California is a matter of state concern, and that redevelopment projects are state projects, not municipal projects. The California Legislature found that the problems created by the existence of slums and blighted areas generalize throughout the state, and are not limited to the areas immediately surrounding such problem areas [See California Health and Safety Code §§ 33040-33048]. The suggestion implicit in the contentions of *amici curiae* that the City Council would be somehow avoiding a responsibility of the City by utilizing tax allocation financing therefore is patently false.

The argument of *amici curiae* is also based upon the assumption that tax funds "belonging" to other taxing agencies will be taken from them by the operation of the tax allocation provisions of the California Constitution and statutes. However, as shown above, these tax allocation provisions operate in the nature of a limited tax exemption on the increase in valuation of the property within the redevelopment project, which increase is brought about by the project.

It is submitted that this form of tax exemption for redevelopment projects is entirely proper, and that the local legislative body of the community wherein the project is located is the only logical body to be delegated the power and responsibility of approving and adopting redevelopment plans. By well-settled California law, no taxing agency within the state ever obtains a vested right to tax any particular property [*County of Mariposa v. Merced Irr. Dist.*, 32 Cal. 2d 467, 474, 196 P. 2d 920 (1948); *City of Long Beach v. Board of Supervisors of Los Angeles County*, 50 Cal. 2d 674, 678, 328 P. 2d 964 (1958)]. The state may therefore grant tax exemptions on property within the taxing jurisdiction of such agencies, including an exemption for property within redevelopment project areas.

The several states have broad power in respect of taxation for state purposes, which also extends to granting exemptions from taxation [*Allied Stores of Ohio v. Bowers*, 358 U. S. 522, 525-528]. In the *Allied* case, Ohio had granted a tax exemption to certain merchandise and agricultural products belonging to non-residents but stored in Ohio. The exemption was upheld against an attack on the ground that it violated the equal protection guarantees of the Fourteenth Amend-

ment. The Court stated that many reasons could have motivated the Ohio legislature and that the Court could not say that the exemption was not based upon a "reasonable distinction, or difference in state policy, or that no state of facts reasonably can be conceived to sustain it". Certainly it cannot be said that there is no state of facts to support the limited tax exemption questioned herein. The pledge, in effect, of the taxes produced by the increase in valuation brought about by redevelopment to finance that redevelopment appears completely reasonable. Similarly, the local legislative body of the community wherein the redevelopment project is located would appear to be the most logical unit of local government to be delegated the power to approve and adopt redevelopment plans.

It would seem clear that California could have provided a straight tax exemption for property within redevelopment project areas, as have other states [See subdivision A, above]. In such a case, it would appear absurd to argue that a local legislative body could not adopt a redevelopment plan because it were a so-called partisan agency, and because the adoption of the plan would create a tax exemption on the property within the project, thereby depriving other taxing agencies of a portion of their assessed valuation base.

There would appear to be no difference in substance between this hypothetical situation attacked by *amici curiae*, wherein the California Legislature has provided a more imaginative system to accomplish the same result—the use of the *ad valorem* taxes on the increase in valuation in a redevelopment project area brought about by the redevelopment of the area to aid in financing that redevelopment.

The *amici curiae* rely on *Carter v. Carter Coal Co.*, 298 U. S. 238, wherein it was held that a group of private persons in the coal industry could not be delegated power to regulate wages and hours since the majority would be in a position to regulate the business affairs of their competitors. Considerable doubt would appear to exist as to the remaining strength of the *Carter* case in view of *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381 and *Old Dearborn Distrib. Co. v. Seagram-Distillers Corp.*, 299 U. S. 183.

The thrust of the *Carter* decision appears to be that it is improper to delegate governmental functions to non-governmental groups of private persons. Assuming that the *Carter* case is still the law in the sense noted, it would appear to be wholly inapplicable to the facts of this case. The City Council is one of the forms of local government created by the state, and as set forth above, when acting under state law to fulfill state objectives respecting redevelopment, it acts as a state agency. It in no sense is a non-governmental body. Further, the City and the other taxing agencies are not competing entities. They are all creatures of the state, fulfilling governmental functions. The *Carter* case would seem completely inapplicable. It is submitted that the contention of *amici curiae* that the City Council is not the proper agency to consider and adopt redevelopment plans for slum and blighted areas within the city, including plans financed by tax allocation bonds, is wholly without merit and raises no substantial federal questions.

Conclusion.

The *amici curiae* seek to file a brief in support of questions not propertly before this Court.

Further, the points made by the *amici curiae* are clearly without substance, and the constitutional questions covered in the proposed brief are wholly lacking in substantiality.

It is therefore submitted that the motion of the *amici curiae* for leave to file a brief in support of the Jurisdictional Statement of the Goldmans should be denied.

Respectfully submitted,

HENRY O. DUQUE,
Attorney for Appellee.

ADAMS, DUQUE & HAZELTINE,
BRUCE A. BECKMAN,
EUGENE B. JACOBS,
Of Counsel.

APPENDIX "A."

Partial Reporter's Transcript.
Wednesday, December 7, 1960
9:30 O'Clock A.M.

* * * * *

Mr. Clapp: * * * *

I just want to clean up a few other points here. I want to say this to your Honor. I have had it happen to me that when I had a point that merited consideration, that it got lost in somebody else's point because the Court worked so hard to dispose of that point, that mine became overlooked; and for that reason I have to feel it's the duty to my client and to the Court to say to you that I think Mr. Silver's difficulty arises from the fact that he will not recognize that the Council in this instance is a state Agency operating under State laws which were so very ably presented by Mr. Doherty yesterday.

I think when that premise—his premise to the contrary is removed, I think that he hasn't anything to talk about, and I do not want the Court to get lost in Mr. Silver's labyrinth.

In almost every important respect I agree with the Agency and the City Attorney, on those points in reference to Mr. Silver's position, and I think only that I should point out to the Court in connection with Mr. Beckman's argument this morning about the limitations of Section 527, CCP, that there is one case which indicates that a state tax payer may sue to enjoin the expenditure of funds by a state agency.

In that respect I agree with Mr. Silver. In all other respects I do not.

* * * * *

State of California, County of Los Angeles—ss.

I, Donald L. Ostrov, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing 3 pages are a true and accurate reporter's partial transcript of the closing argument of Mr. Austin Clapp taken on Wednesday, December 7, 1960, in the case of Frank W. Babcock vs. The Community Redevelopment Agency of the City of Los Angeles, California, etc., et al., No. 725375, and consolidated cases Numbers 723840, 723434, 725506, 725614, and 725637.

Dated this 12th day of September, 1964.

/s/ Donald L. Ostrov,
Official Reporter

APPENDIX "B."

California Health and Safety Code Sections 33040-33048.*

33040. It is found and declared that there exist in many communities blighted areas which constitute either social or economic liabilities, or both, requiring redevelopment in the interest of the health, safety, and general welfare of the people of such communities and of the State. These blighted areas are characterized by one or more of the conditions set forth in Sections 33041 to 33044, inclusive.

33041. A blighted area is characterized by the existence of buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, or any combination of such uses, which are unfit or unsafe to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of any one or a combination of the following factors:

(a) Defective design and character of physical construction.

(b) Faulty interior arrangement and exterior spacing.

(c) High density of population and overcrowding.

(d) Inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities.

(d) Age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses.

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*Recodified and renumbered in 1963 as California Health & Safety Code §§ 33030-33038.

33042. A blighted area is characterized by:

(a) An economic dislocation, deterioration, or disuse, resulting from faulty planning.

(b) The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development.

(c) The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.

(d) The existence of inadequate streets, open spaces, and utilities.

(e) The existence of lots or other areas which are subject to being submerged by water.

33043. A blighted area is characterized by a prevalence of depreciated values, impaired investments, and social and economic maladjustment to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

33044. A blighted area is characterized by:

(a) In some parts of the blighted area, a growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety, and welfare.

(b) In other parts of the blighted area, a loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.

33045. It is further found and declared that:

(a) The existence of blighted areas characterized by any or all of such conditions constitutes a serious and growing menace which is condemned as injurious and inimical to the public health, safety, and welfare of the people of the communities in which they exist and of the people of the State.

(b) Such blighted areas present difficulties and handicaps which are beyond remedy and control solely by regulatory processes in the exercise of the police power.

(c) They contribute substantially and increasingly to the problems of, and necessitate excessive and disproportionate expenditures for, crime prevention, correction, prosecution, and punishment, the treatment of juvenile delinquency, the preservation of the public health and safety, and the maintaining of adequate police, fire, and accident protection and other public services and facilities.

(d) This menace is becoming increasingly direct and substantial in its significance and effect.

(e) The benefits which will result from the remedying of such conditions and the redevelopment of blighted areas will accrue to all the inhabitants and property owners of the communities in which they exist.

33046. It is further found and declared that:

(a) Such conditions of blight tend to further obsolescence, deterioration, and disuse because of the lack of incentive to the individual landowner and his inability to improve, modernize, or rehabilitate his property while the condition of the neighboring properties remain unchanged.

(b) As a consequence the process of deterioration of a blighted area frequently cannot be halted or corrected except by redeveloping the entire area, or substantial portions of it.

(c) Such conditions of blight are chiefly found in areas subdivided into small parcels, held in divided and widely scattered ownerships, frequently under defective titles, and in many such instances the private assembly of the land in blighted areas for redevelopment is so difficult and costly that it is uneconomic and as a practical matter impossible for owners to undertake because of lack of the legal power and excessive costs.

(d) The remedying of such conditions may require the public acquisition at fair prices of adequate areas, the clearance of the areas through demolition of existing obsolete, inadequate, unsafe, and insanitary buildings, and the redevelopment of the areas suffering from such conditions under proper supervision, with appropriate planning, and continuing land use and construction policies.

33047. For these reasons it is declared to be the policy of the State:

(a) To protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of the communities in which they exist by remedying such injurious conditions through the employment of all appropriate means.

(b) That whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance, and in the making

of improvements necessary therefor, it is in the public interest to employ the power of eminent domain, to advance or expend public funds for these purposes, and to provide a means by which blighted areas may be redeveloped or rehabilitated.

(c) That the redevelopment of blighted areas and the provision for appropriate continuing land use and construction policies in them constitute public uses and purposes for which public money may be advanced or expended and private property acquired, and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the State and of the communities in which the areas exist.

(d) That the necessity in the public interest for the provisions of this part is declared to be a matter of legislative determination.

33048. It is found and declared that blighted areas may include housing areas constructed as temporary government-owned wartime housing projects, and that such areas may be characterized by one or more of the conditions enumerated in Sections 33041 to 33044, inclusive.